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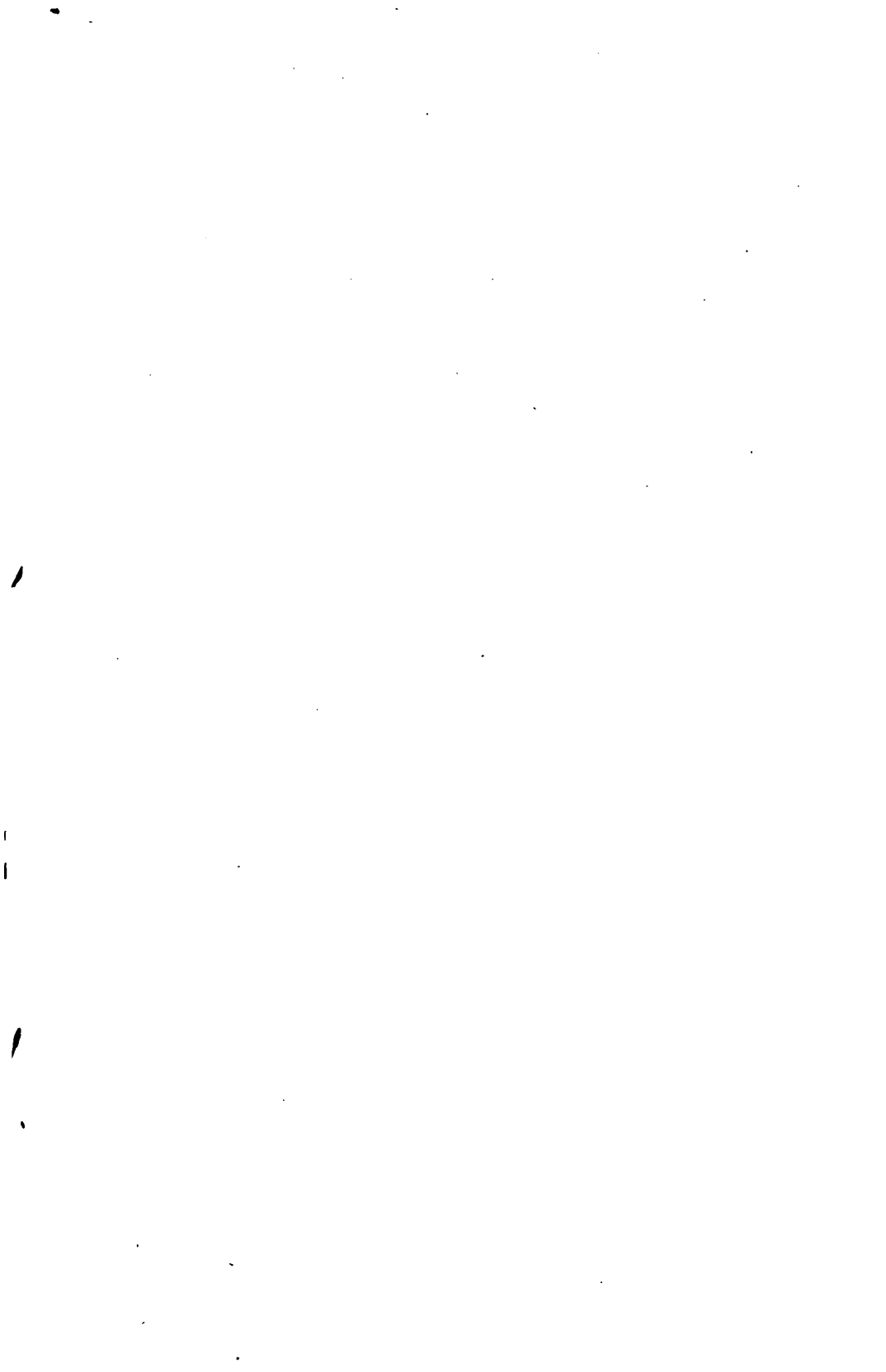
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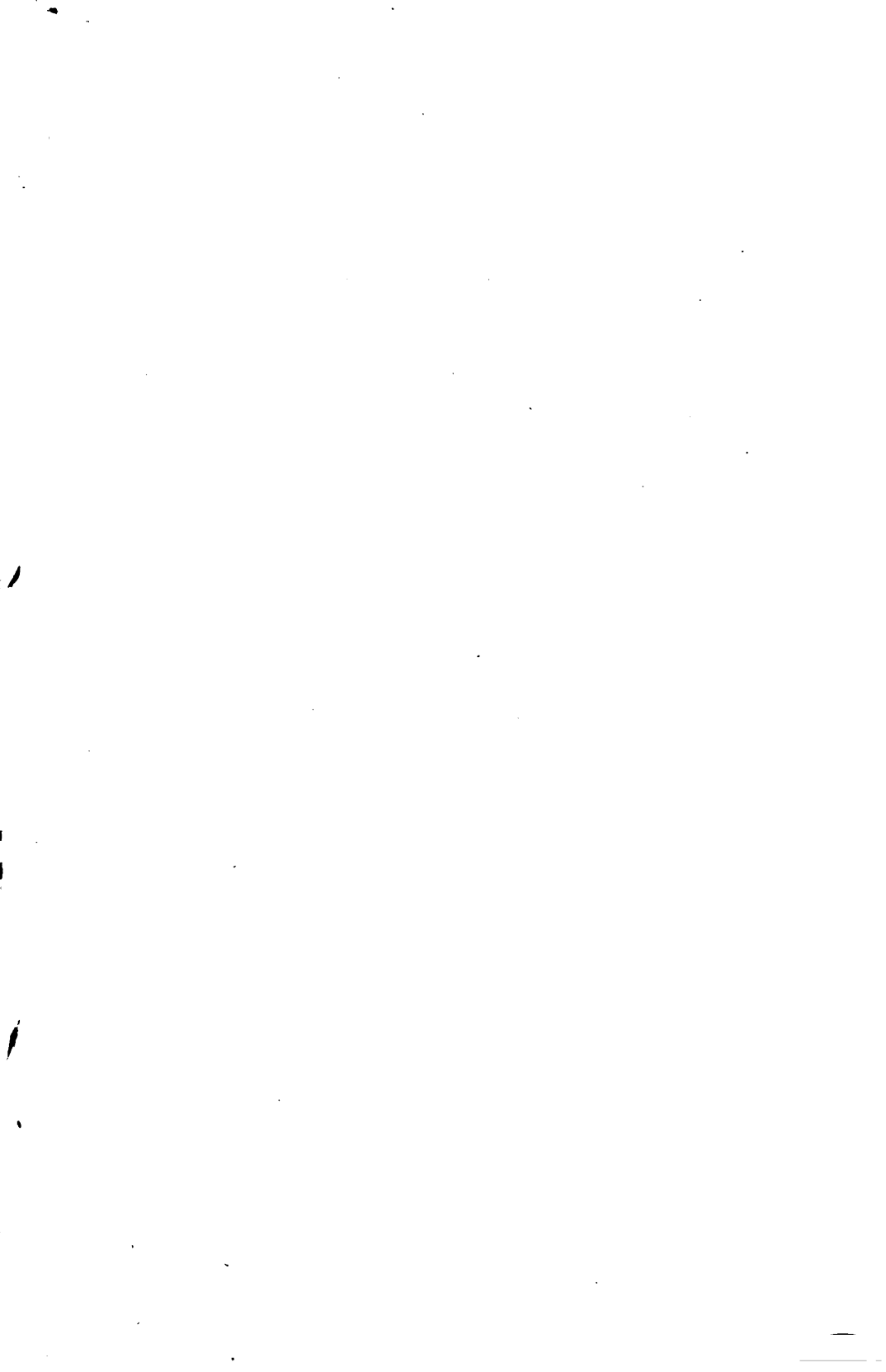




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1906







LIQUOR TAX LAWS.

HEARINGS

BEFORE THE

SUBCOMMITTEE ON INTERNAL REVENUE

OF THE

COMMITTEE ON WAYS AND MEANS,

59TH CONGRESS, 1ST SESSION.

**SHIPMENT OF LIQUOR C. O. D. PUBLICATION
OF LISTS OF SPECIAL-TAX STAMP HOLDERS.
PROHIBITING ISSUANCE OF SPECIAL-TAX
STAMPS IN PROHIBITION COMMUNITIES.**

FEBRUARY 3 AND 5, 1906.

**WASHINGTON:
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COMMITTEE ON WAYS AND MEANS.
SUBCOMMITTEE No. 3, ON INTERNAL REVENUE.

JOHN DALZELL, *Chairman.*

JAMES T. McCLEARY.
SAMUEL W. McCALL.
EBENEZER J. HILL.

HENRY S. BOUTELL.
CHAMP CLARK.
OSCAR W. UNDERWOOD.

WILLIAM K. PAYNE, *Clerk.*

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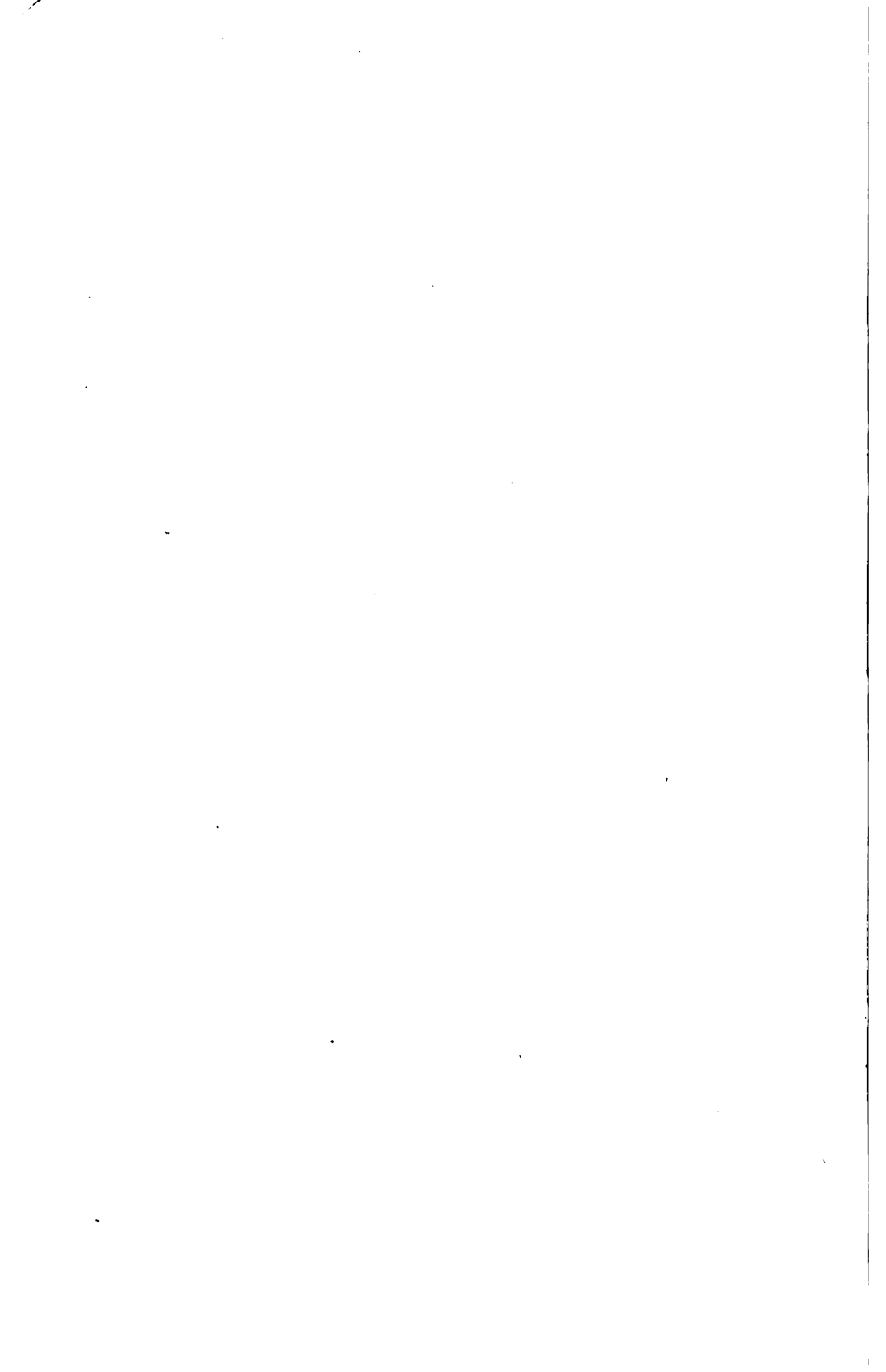
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LIQUOR TAX LAWS.

COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE NO. 3, ON INTERNAL REVENUE,
Saturday, February 3, 1906.

The subcommittee met this day at 2 p. m., with the chairman, Hon. John Dalzell, in the chair.

Present: The chairman and Messrs. McCleary, Hill, Boutell, Clark of Missouri, and Underwood.

The CHAIRMAN. The committee will come to order, and we will first hear Mr. Humphreys, of Mississippi.

[For copies of bills under consideration, see p. 76-80.]

STATEMENT OF HON. B. G. HUMPHREYS, A REPRESENTATIVE FROM MISSISSIPPI.

[For additional statement of Mr. Humphreys, see p. 71.]

Mr. HUMPHREYS. Mr. Chairman and gentlemen of the committee, the bill that I want to direct your attention to is a bill^a that provides for an amendment of section 3240 of the Revised Statutes. That section 3240 now provides that the internal-revenue collector shall keep an alphabetical list of the parties to whom he issues this special tax and have it posted in his office. The amendment that I propose is to require him in addition to that to give a certified copy of the tax receipt which he issues to retail liquor dealers upon request.

Mr. Chairman, I want to say in the outset that this is not a prohibition measure. My objection is to an order issued by the Secretary of the Treasury, and it is an objection that the whisky men, the men engaged in the business of retailing liquors, would, or at any rate should, urge just as strenuously as a man who is opposed to the sale of liquor at all. A man who has a license to sell whisky in the State of Mississippi, and in most of the States, I suppose, has to pay a very large sum—from \$600 to \$1,500—and he is just as much interested in having the blind tiger, without any license whatever, prevented from encroaching on his rights as the man who is opposed to the sale of liquor at all is in favor of his conviction.

Mr. Chairman, the rule which the Secretary of the Treasury has promulgated, through the Commissioner of Internal Revenue, changes the rule of evidence that has always existed in all common-law countries

^a H. R. 4533 (see p. 76.)

down to the date when that rule was promulgated. It extends the protection of privilege to a witness and to a class of testimony that has never been exempted under the law. The reason for giving the protection of privilege to certain classes of testimony is apparent, and it is unnecessary for me to mention them here; but the law has always held that the protection of privilege which is extended to the lawyer, and which enables him, and commands him, in fact, to keep secret the communications which come to him from his client, is subject to this exception: That if the communication to him is of a crime intended to be committed—of an offense which is contemplated, one in futuro, not one actually accomplished—then the protection of privilege is taken from him and he can not decline to testify in the courts; and that rule, I believe, is universal.

In some of our States privilege is extended to the communications that are made to priests at the confessional, and in those States, where the communication evinces an intention to commit a crime or makes known the fact that the confessor is contemplating a crime, under the decisions of the States where those communications are privileged the priest even is required to testify.

Now, in this case the man goes to the internal-revenue collector and says: "I intend to go into the State of Maine and engage in an unlawful enterprise." If he had communicated that fact to his attorney, or if he had conveyed it to the priest, they would be required to testify to it in the courts. The collector of internal revenue was formerly required to testify, too. It was so held in the 74th Federal Reporter.^a The case went up from Connecticut—the Hirsch case—and it required this rule of the Department to protect him.

THE CHAIRMAN. What is the rule of the Department to which you refer?

MR. HUMPHREYS. The rule of the Department is quite a long rule, but it is just this: The collectors shall not give copies of their records and they shall not go into the courts and testify as to the issuance of the receipt, and they shall not testify at all where a man is being prosecuted for unlawful retailing.

MR. BOUTELL. Will you kindly give the number of the regulation and the page so that we may have it in the hearing?

MR. HUMPHREYS. It is set out in the case of Lamberton in the One hundred and twenty-fourth Federal Reporter, which went up from the State of Arkansas. The language of it to start with is this:

Collectors are hereby prohibited from giving out any special tax records or any copies thereof to private persons or to local officers or to produce such records or copies thereof in a State court, whether in answer to subpoenas duces tecum or otherwise. Whenever such subpoenas shall have been served upon them they will appear in court and answer thereto and respectfully decline to produce the records called for, on the ground of being prohibited therefrom by the regulations of this Department.

The reason which the Commissioner gives for this rule and the reason the courts have given for sustaining it is that the evidence is gotten from the taxpayer under compulsion, and that it is unfair to divulge it for that reason.

I submit there is no compulsion about it at all. The only compulsion he is subjected to is to comply with the rules of the Department after he has made up his mind to engage in this unlawful enterprise.

^a In re Hirsch, 74 Federal Reporter, p. 928.

He is not required to engage in it at all. That matter is his own election. He can go into the whisky business in direct violation of the law if he wants to, or he can let it alone. If he decides to do it, however, he is required to conform to the rules of the Department in making out his application. In 1794, I think it was the first revenue bill, they called this tax a license. They called it a license under the act of 1813. They called it a license in the act of 1864. Now, in the License Cases reported in the 5th Wallace^a it was contended that, having paid a license to the United States Government, they were entitled to immunity from any interference on the part of the State.

The court held, however, in those cases that it was not a license at all; that they had no right to go into a State and violate the law because of the payment of this license; that it was simply a tax. The Congress then, in 1866, to make that clear, amended the law and put in the two words "special tax" in place of the word "license," so that the man could not be deceived when he paid it on the theory that he was securing a license. Congress went further than that and specifically and particularly enacted that this tax receipt should not be construed as any authority whatever, so when a man takes it, I submit that the Department is under no obligation to him whatever, because he takes it understanding that he is receiving no authority to violate any State law. They have told him when they issued the license that he has no authority whatever in virtue of it to go into any State and engage in the business of a retail liquor dealer, and that if he does go he goes at his own peril.

The CHAIRMAN. Let us get in the record at this point that section of the Revised Statutes:

The payment of any tax imposed by the internal-revenue laws for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on the same within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State, or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business for State or other purposes.^b

Mr. HUMPHREYS. That being true, how can the Government say we owe this man a duty because we have gotten this information from him by compulsion? We owe him no duty whatever. When he goes into a State and does violate the law he goes there knowing that he has no protection from the Government, and yet he claims protection from the Government to the extent that the Government will not give any information against him if he does violate the laws of the State.

The President of the United States thought this matter of sufficient importance to call the attention of Congress to it in his annual message. He laments the fact—I believe I will read that part of it—the laxity of the administration of our criminal laws. He says, among other things:

Centuries ago it was especially needful to throw every safeguard round the accused. The danger then was lest he should be wronged by the state. The danger is now exactly the reverse. Our laws and customs tell immensely in favor of the criminal and against the interests of the public he has wronged. Some antiquated and outworn rules which once safeguarded the threatened rights of private citizens now merely work harm to the general body politic. The criminal law of the United

^a License Tax Cases, 5 Wallace, 462.

^b U. S. Rev. Stat., sec. 3243.

States stands in urgent need of revision. The criminal process of any court of the United States should run throughout the entire territorial extent of our country. The delays of the criminal law, no less than of the civil, now amounts to a very great evil.

The President in another place, referring to what he calls "bootlegging" among the Indians, says:

It is gratifying to note that the States and municipalities of the West which have most at stake in the welfare of the Indians are taking up this subject and are trying to supply, in a measure at least, the abdication of its trusteeship forced upon the Federal Government. Nevertheless, I would urgently impress upon the attention of the Congress the question whether some amendment of the internal-revenue laws might not be of aid in prosecuting these malefactors, known in the Indian country as "bootleggers," who are engaged at once—

Now listen to this:

in defrauding the United States Treasury of taxes and, *what is far more important*, in debauching the Indians by carrying liquors illicitly into territory still completely under Federal jurisdiction.

The Commissioner of Internal Revenue reports that there are one hundred and sixty-odd men in the Indian Territory who have paid him taxes on the business of retail liquor dealing and as retail malt liquor dealers, and he declines to give evidence against them, although the President of the United States is calling for the enforcement of the law.

The CHAIRMAN. What you seem to desire is an amendment to the regulations?

Mr. HUMPHREYS. That is all. It is to make the United States Government get out of the way so that the States can enforce their own laws.

Mr. BOWIE. Let me emphasize the point. We have statutes in the various States to the effect that the possession of one of these special stamps from the Government is *prima facie* evidence that a man is engaged in the business.

Mr. HUMPHREYS. Exactly.

The CHAIRMAN. I assume that under the law the tax collector has a list posted in his office where anybody can go in and see it.

Mr. HUMPHREYS. Let me say there are two reasons that have been given, and only two, in all the decisions I have ever read on the subject, why public records should be protected or have the protection of privilege extended to them. One is that it may be of such inconvenience to require the officer to leave his office and carry with him his records as to interfere with his public duties; and the other is this, that it makes public certain matters that ought not to be made public, and in that case the officer would report to the court that it is not a matter that ought to be made public.

So far as having his special tax payment kept a secret, the law requires the collector to post in his office a list of the names of all who have paid the special tax and the place where he intends to do business, so there is, therefore, no secret. What he does do is to say: "I will not go into court and carry this list with me, although the law requires me to make the list of names public, and I will not give a certified copy of the tax receipts." In other words, "I will not give you any information on the subject whatever."

Mr. CLARK, of Missouri. All you want is to have a certified copy of the list of those fellows who have paid the Government the retail liquor dealers' tax and then the State is to use that as evidence against the fellow?

Mr. HUMPHREYS. That is all that the State wants to do—simply wants that rule annulled so that the State can use this evidence if they see fit.

The CHAIRMAN. Do you know whether or not a certified copy, such as you desire, can be secured by making an application to the Secretary of the Treasury under existing laws and regulations?

Mr. HUMPHREYS. It can not be had by making application to the collector of internal revenue.

The CHAIRMAN. But to the Secretary of the Treasury?

Mr. HUMPHREYS. I will not say, because I do not know, whether it can or not. There is no way to find out. Here is the point about that: These records are in the possession of officers all through this country. They have the records, and Greenleaf in his work on evidence says that the man who has the possession of the records is the man who ought to certify them. In the case that went up from Connecticut the collector made the point that "I am simply a deputy collector, and this demand ought to be made on the Secretary of the Treasury or on the Commissioner of Internal Revenue." The court said: "You are the man who has the custody of the records, and all we want is for you to certify it." Then it was objected to on the ground that he had no authority under the law to make any certificate whatever. The court held, and cited Greenleaf on Evidence, that the best rule and the weight of authority is, that the officer who has the custody of a record can certify to it, and the court will receive it whether the law specifically authorizes him to make certificates or not.

The CHAIRMAN. This receipt is issued by the Commissioner of Internal Revenue here in Washington?

Mr. BOWIE. No, sir; he issues the blanks and the receipt is actually issued by the collectors in the several States.

The CHAIRMAN. Perhaps he fills the name in, but it bears the signature of the Commissioner?

Mr. HUMPHREYS. It is merely a stereotype. Under the law the collector of internal revenue has no copy of the tax receipt at all. He has merely a list, which is published in his office. That is all he has. He has no copy or duplicate.

Mr. CLARK, of Missouri. Here is the way they do: They have a book just like this [indicating], a tax-receipt book with a stub here [indicating] and the license over here [indicating], and they fill it out, "John Dalzell" or "Champ Clark," or whoever it is, and they tear this [indicating] out and keep this stub in the book.

The CHAIRMAN. The original record is in the office of the Commissioner of Internal Revenue in Washington.

Mr. HUMPHREYS. The Commissioner of Internal Revenue made objection to this bill in the Fifty-eighth Congress, because the several collectors did not have any copies and therefore could not certify one. I therefore put it in my bill this session "he shall make and preserve a duplicate," because I believe if he has no copy he ought to have one. This bill requires him to keep one, and then the States can get it. It is interfering with the proper administration of the criminal law of the State to require a man in California, for instance, or in Oregon or in Maine to come all the way to Washington to get a record that the collector in Maine or Oregon or California who issues the tax receipt ought to have and can have.

The CHAIRMAN. Will you refer us to that case?

Mr. HUMPHREYS. The case where they required the testimony was *In re Hirsch*, 74 Federal Reporter, 928. That was before this order was promulgated. The next case was *Boske v. Comingore*, as sheriff of Kenton County, Ky., 177 United States, 459. This is the only case which has gone to the United States Supreme Court, and it is not directly on this question, but they passed on this order and the order was held to be a valid and reasonable regulation under the law. There is another case, *In re Lamberton*, 124 Federal Reporter. It went up from Arkansas. Judge Rogers decided on a state of facts directly in point that the order of the Treasury Department had the force and effect of law and that it would take legislation to change the law.

Let me repeat, Mr. Chairman, that this is not a prohibition measure, but simply a measure to require this subordinate officer to put himself on a par with the President of the United States, so far as the administration of the law is concerned. I want this revenue officer put on the same footing with everybody else. I know of no other officer in the Government, from the President down to the humblest citizen of the Government, who has the protection that this order gives to the internal-revenue collector, and that, too, for the simple, sole, and only purpose of preventing States from securing evidence that would convict men engaged in a very disreputable and illegal business. True the Government may get \$25 out of it, but the license for the State on the same business is \$1,000 or more. The States, however, are perfectly willing to do without their part, but the United States Government, whose people make, buy, sell, and produce more than any other people on the face of the earth, can not raise enough money to run the Government without taking this rake-off from the "blind tigers." This is humiliating.

The CHAIRMAN. You would prohibit the issue of this tax receipt altogether?

Mr. HUMPHREYS. That is the only reason that the revenue collector can give, I think, because it interferes with the collection of revenue.

Mr. UNDERWOOD. I want to ask if, in your judgment, we should pass a bill requiring the Federal authorities, the internal-revenue collectors, to furnish the State officials with a list of all licenses issued by them in a State, which would furnish the Federal authorities a list of all liquor dealers licensed by the State, whether that would not really answer your purpose?

Mr. HUMPHREYS. Yes, sir.

The CHAIRMAN. The real purpose of your bill is to secure certain evidence to be used in prosecuting the cases in the State courts?

Mr. HUMPHREYS. Yes, sir; that is the real purpose of the bill.

STATEMENT OF HON. F. CLARK, A REPRESENTATIVE FROM FLORIDA.

[For additional statement of Mr. Clark, see p. 70.]

Mr. CLARK, of Florida. Mr. Chairman and gentlemen of the committee, Mr. Humphreys has very thoroughly covered the question involved in one of the bills which I introduced. I had two bills, H. R. 8104 and H. R. 8105 [see pp. 77-79]. I am not sure which is the one for the furnishing of lists; the other prohibits the receiving of the special tax.

Mr. BOUTELL. Bill No. 8104 provides for the furnishing of copies to the clerks of courts.

Mr. CLARK, of Florida. Yes, sir. I shall have nothing to say on that subject, because Mr. Humphreys has fully covered it. I want to address myself to the bill No. 8105. That is the bill which absolutely prohibits collectors of internal revenue from receiving payment of special taxes from any person to engage in the liquor business in any town, voting district, county, State, or Territory by the local laws of which the engaging in that business is prohibited.

I want to say this to you gentlemen: That in the State of Florida, which I in part represent, there are 46 counties. I think 30 of them are prohibition counties. We have in the State of Florida a local-option law. Each county can by election, upon the petition of a certain number of registered voters, determine whether or not the sale of liquors shall be prohibited in that county. At least 30 counties have held that election and have voted that the sale of liquors shall not be carried on in that particular county. To-day in that State I am sure I am not far of the mark when I say that nine-tenths—fully nine-tenths—of the crimes committed in the State of Florida are due directly to the receiving of special taxes by the Federal Government from “blind-tiger” keepers. There is no question about it. The judges of our courts will so testify, and the records of our different counties will support the statement that fully nine-tenths of all the crimes in the State of Florida are traceable directly to the reception of this special tax by the Federal Government from “blind-tiger” keepers.

Now, I am not a prohibition crank. So far as I am concerned, I am perfectly willing that liquor shall be sold or shall not be sold. It makes no possible difference to me; but I take it that this Congress ought to aid the States in so far as it possibly can to enforce the law and give effect to the registered will of a majority of the people of a particular locality.

Mr. WILLIAMS. There is a clause in the Constitution which requires that the taxes and excises shall be uniform throughout the United States. If the Federal Government charged \$10 in one place, we will say, for a liquor license, and \$5 in another place, would that not be a violation?

Mr. CLARK, of Florida. It would if the Federal Government issued a license, but the Federal Government does not issue a license. The Federal Government does not grant a privilege to those people.

Mr. BOWIE. Has the Federal Government under the Constitution any power to issue a license?

Mr. CLARK, of Florida. I think not.

Mr. WILLIAMS. It is an excise tax?

Mr. CLARK, of Florida. Yes, sir.

Mr. WILLIAMS. And excises must be uniform throughout the United States?

Mr. CLARK, of Florida. Certainly, upon the same class of individuals; but where they are carrying on a business, we will say, that is absolutely prohibited by the local law and it is entirely within the province of the local law to prohibit it, the Federal Government says, “We have nothing to do with regulating the carrying on of this business—that is, the granting of license or privilege to carry it on; that is entirely within the province of the States;” but if the State of Maryland, we will say, does permit persons to engage in and carry on this business

within her borders, then those persons must pay the Federal Government a specific tax.

Now, then, the Federal Government, gentlemen, can not afford—the Congress of the United States can not afford to put itself in the attitude of saying, “We know we are in effect in a copartnership with declared open violators of law. We know that John Smith, who applies to us to pay this special tax, intends to go into the State of Maine and defy the laws of that Commonwealth. We know that that is his purpose. We know that he intends to do it in defiance of the will of the great majority of those people.”

MR. WILLIAMS. Pardon an interruption. There has just been handed me the form of this certificate, which reads:

Received from ——— the sum of — dollars for special tax on the business of retail liquor dealer at ———, in the State of ———, for the period of ———, etc.

Now, then, if this were filled up in accordance with the truth it would read:

Received from ——— the sum of — dollars for special tax on the unlawful business of retail liquor dealer at a certain place.

MR. CLARK, of Florida. Yes, sir.

MR. BOUTELL. If these “blind tigers,” or whatever they are called, are willing to run the risk of evading a State law, would the passage of these bills prevent their running the risk?

MR. CLARK, of Florida. I think they would absolutely prohibit it.

MR. BOUTELL. In what way?

MR. CLARK, of Florida. Let me say this: I was the United States district attorney in my district in Florida for nearly four years. I prosecuted a great number of these cases. I am perfectly familiar with this subject so far as the violation of it in my particular section is concerned. I want to say this, and it is absolutely true, you take a man who wants to engage in the business of carrying on illicit dealing in liquor in a prohibition county and in ninety-nine cases out of a hundred he is not afraid at all of the local authorities, and there is reason for it, and that reason is this:

You take a county that is dry—no saloons. There are in that county a great many people who want liquor. They want it openly if they can get it. They want it on the quiet if they can not get it otherwise, and they are going to have it if there is any possible way of getting it. So the man who starts up in that business goes down to Jacksonville, where the collector's office is located, and he buys a special tax. He comes back with his receipt in his inside pocket. He does not post it up, but he keeps it. He then furnishes it to Tom, Dick, and Harry in the community, and if the good people of the community, those who really desire the enforcement of the law, get after him and he is finally hauled before the court he can always manage—he can manage pretty nearly every time to get some fellow on the jury who has some of the “hog,” and he will get an acquittal or a mistrial every time beyond question; but if he knows that the Federal authorities are after him, and that if he is caught he will be carried to Jacksonville or to Tampa or Ocala, or some other place where the Federal court is held, and tried before a jury of strangers, to none of whom he has ever furnished any of this “stuff” and who are absolutely under no obligation whatever to him, he is not going to attempt it. Very few of them do. It will amount, not to absolute prevention, nothing will do that—you can not

absolutely prevent murder or larceny or anything else—but it will amount to a practical enforcement of the law against those people.

Mr. WILLIAMS. You are not arguing the question of prohibition or antiprohibition?

Mr. CLARK, of Florida. No, sir.

Mr. WILLIAMS. But you are arguing that the Federal Government ought not to lend itself as an assistant to the lawbreakers in a State?

Mr. CLARK, of Florida. Yes, sir.

Mr. BOUTELL. Right along in that connection: Notwithstanding the fact that one of these dealers holds the Government license, it is still true, is it not, that you have the entire machinery of justice and execution of the law of a sovereign State to punish a violator and to put an end to the business?

Mr. CLARK, of Florida. Yes, sir; but that is the trouble we run up against right there.

Mr. BOUTELL. It is not a very gratifying thing to contemplate that one of our sovereign States is unable to execute the law.

Mr. CLARK, of Florida. I do not believe that you have ever lived in a community where it was enforced—I judge not—have you?

Mr. BOUTELL. I never lived in such a community.

Mr. CLARK, of Florida. It is hard for you gentlemen who live in cities, or where they have not this law, and where the saloons are adequate, and all that sort of thing—it is hard for you to realize exactly how difficult it is in a country community to convict a home man, before the jury that he has been furnishing liquor to, for the illegal selling of liquor. It is the hardest problem on earth.

Mr. PEARRE. The Supreme Court of the United States in the license-tax cases in 5 Wallace held that internal-revenue officers of the Government should not be brought before the court, should not respond to summons and bring the records into court and aid in the conviction of these men, and now the Government puts itself in the position of interfering with the proof—of suppressing the testimony.

Mr. CRAIN. Let me say that the statement of Mr. Pearre seems to me entirely without any justification in fact or—

The CHAIRMAN. Whom do you represent?

Mr. CRAIN. The United Brewers' Association.

The CHAIRMAN. You will have an opportunity to be heard later. [See pages 51-56.]

I want to say that I live in a community that has a local-option law, where there is absolute prohibition, and we never found any difficulty in having our own local authorities administer the law; at least I never heard of any trouble.

Mr. CLARK, of Florida. In brief, that is all I desire to say. I think that this is a law that the people of this section ought to have. I believe Congress ought to assist them. They are doing all they can, and think it is right.

Mr. WILLIAMS. It is not a question of Congress assisting them, it is a question of Congress desisting from assisting the lawbreakers.

Mr. CLARK, of Florida. That is all.

Mr. BOUTELL. I infer from your advocacy of these bills, and more particularly from what you have said, that if this law should be passed a man selling liquor would be violating both the State law and the Federal license law, and your prosecution would be all by the Federal authorities?

Mr. CLARK, of Florida. Not altogether.

Mr. BOUTELL. All your hopeful prosecutions?

Mr. CLARK, of Florida. Yes, sir. The effective ones would be by the Federal authorities. There is no question about that. We would have the sheriff and his deputies and the United States marshal and his deputies both pursuing these people, and it would almost absolutely break it up so far as my particular section of the country is concerned, and I do not believe that Congress can take the position—there is but one argument against it, and that is the interference with the revenue—I do not believe that Congress can take the position, that this great United States of America can sit here and occupy the position of taking \$25 from a man whose declared purpose it is to defy the law and turn him loose upon a community to override public opinion and the written law of that community.

Mr. WILLIAMS. Take \$25 and allow him to engage in an unlawful business?

Mr. CLARK, of Florida. Yes, sir.

Mr. HILL. If this law was passed then in prohibition States the very thing you would not want done would be to try the cases in the State courts and not in the Federal courts, or else you would compel the United States Government to pursue and follow down these law-breakers of the State laws?

Mr. CLARK, of Florida. My bill provides, if you will examine it, that there is a penalty attached for violation of the law. It is no more than the Federal authorities should do. If a man engages in a business without having paid that tax the Federal authorities should pursue him.

Mr. HILL. It is an indirect way of compelling the Federal Government to prosecute violations of the State laws.

Mr. CLARK, of Florida. Not more than to-day. I have prosecuted such cases when I was in the position of district attorney, and the Federal Government is spending thousands of dollars every day for the purpose of preventing violations of this law. It would do no good to say that the Federal Government will not receive this tax and then have no penalty for people carrying on the business without payment.

The CHAIRMAN. We will now hear Mr. Pearre.

Mr. PEARRE. Mr. Chairman, I would suggest that the committee might hear Mr. Hendrickson in my stead. Mr. Hendrickson comes from my State and I will step aside in his favor.

[For further statement of Mr. Pearre, see p. 62.]

STATEMENT OF MR. F. C. HENDRICKSON, OF CUMBERLAND, MD.

Mr. HENDRICKSON. Mr. Chairman and gentlemen of the committee, I want to speak in favor of Colonel Pearre's bill,^a and in doing so I support it not on ethical grounds or on the ground of the dispensary or license or prohibition, but only on the ground that whatever policy the States may desire to pursue they may be permitted to pursue with authority untrammelled by any action of the Treasury Department.

I live in a license district. Our courts refuse licenses to certain lawless characters, men who have had their licenses suppressed because they sold to minors and habitual drunkards, etc. Somebody who is

^a H. R. 8768, see p. 78.

determined to trample our State law under foot goes over to the internal-revenue collector and gets his certificate and starts in to defy the State law from the ground up. In the case where he is denied a license he comes into court and sets out that the Federal Government issued him a Government license, and then he even defies the sheriff to interfere with his business. I think that in every portion of those States, whether it is prohibition, license, or dispensary, the present action of the Treasury Department increases the spirit of lawlessness and encourages all those who are violating either the dispensary law, the local-option law, or the license law, and one perhaps as much as another.

Mr. Dalzell comes from Pennsylvania. I have been informed, although not authoritatively, that there was at one time as many internal-revenue tax receipts issued to "speak easies" in Philadelphia as regularly issued licenses. In low-license territories the number of those who hold Federal tax receipts exceeds the number who hold regularly issued licenses. In high-license districts the difference between the number of those who are conducting a legal business under State law and those holding tax receipts becomes more marked. If there is any virtue as to police regulations in the States it can never be shown as long as the man who is engaged in illegal business can square himself for \$25 and avoid the payment of a thousand dollars for State tax. There is no encouragement for the man who wants to obey the law in the high-licensed territories.

Mr. WILLIAMS. Right in that connection I want to read a few sentences from the regulations of the Internal-Revenue Department on page 129 of the Treasury decisions of the Internal-Revenue Office, Volume 3. This is the regulation:

Collectors are hereby prohibited from giving out any special tax records or any copies thereof to private persons or to local officers, or to produce such records or copies thereof in a State court, whether in answer to subpoenas duces tecum or otherwise. Whenever such subpoenas shall have been served upon them they will appear in court and answer thereto and respectfully decline to produce the records called for, on the ground of being prohibited therefrom by the regulations of this Department.

And the court held in this case—Mr. Justice Harlan drew the opinion—that the Department had a legal right in the present state of the United States laws to give that instruction?

Mr. HENDRICKSON. Yes, sir. Section 8 of Article I of the Constitution says that Congress shall have the right to raise such revenue "to pay the debts of the United States and provide for the common defense and general welfare of the United States." Those things are coupled together, and unless those three things can be conjoined it would seem that the framers of the Constitution did not intend that the Government should ever exercise the taxing power unless it could do it when it would subserve the interests of law and order. It should be "for the common defense and general welfare of the United States." How can it be for the general welfare of the United States to stretch the arm of outlawry against the State laws?

Let me call your attention to the revenue law of 1794, the first one that Congress ever passed taxing retailers of intoxicating liquors in the States. Section 3 of the act contains the following provision:

Provided always, That no license shall be granted to any person to sell wines or foreign distilled spirituous liquors who is prohibited to sell the same by the laws of any State.

That act was repealed about eight years later.

Mr. McCLEARY. When was that act passed?

Mr. HENDRICKSON. In 1794. In 1813 Congress again exercised the right to tax retailers of liquors in the States, but again recognized the sovereign police powers of the States by the following provision:

Provided always, That no license shall be granted to any person to sell wines, distilled spirituous liquors, or merchandise as aforesaid, who is prohibited to sell the same by any State.

That act was shortly repealed, in 1817. Then there was no further exercise of the taxing power to raise internal revenue from retail liquor sellers in the States until the passage of the act in 1862, now under consideration. That act also clearly recognized the police powers reserved within the States by this provision:

No such license shall be construed to authorize the commencement or continuance of any trade, business, occupation, or employment therein mentioned, within any State or Territory of the United States in which it is or shall be specially prohibited by the laws thereof or in violation of the laws of any State or Territory.

There was a clear recognition of the police powers of a State and the State reserved those powers. We need not discuss those features. The action of the members of Congress in 1862 clearly recognized the police powers, and they never intended that the taxing power of the Government was to be so used as to virtually break down the police powers. I think all that can be said on this question is this, that the police powers in the States were in suspension in many instances, having yielded to military necessity, and if you will refer to the Congressional Globe of that period you will see that it was expected that the law would soon be repealed. Nobody expected it to last long. The previous acts had not been in force for many years, and I think it can be claimed, inasmuch as the police powers were in suspension, that if they did not pay to the Government they could not pay at all, and I submit, gentlemen, that those who framed and passed the act of 1862 certainly never intended to break down the police powers of the States.

Mr. HUMPHREYS. I would like to read from the opinion of the court in the case of *Gibbons v. Ogden*, by Judge Marshall, in the 9 Wheaton, where he was discussing this police power, the question of the regulation of quarantine matters by the States where they had come into conflict with the Federal law and the court said this, as to the relation existing between the officers of the Federal Government and the officers of the State government:

But, as it was apparent that some of the provisions made for this purpose and in virtue of this power might interfere with and be affected by the laws of the United States made for the regulation of commerce, Congress ^a—

Now note this:

Congress in that spirit of harmony and conciliation, which ought always to characterize the conduct of nations standing in the relation which that of the Union and those of the States bear to each other, has directed its officers to aid in the execution of these laws; and has, in some measure, adapted its own legislation to this object by making provisions in aid of those of the States.

Mr. HENDRICKSON. The title of this very bill of Mr. Pearre is "To aid the States in the enforcement of their liquor-license laws." I want to say, gentlemen, that the police powers of the States and the taxing

^a *Gibbons v. Ogden*, 9 Wheaton, 205.

power of the Federal Government, if the Internal-Revenue Department would be prohibited from granting the tax receipts, would remain just as they are now. We do not ask for any coalition between the Federal powers and the police powers of the States; none whatever. We simply ask that the powers of the States shall be untrammelled by any action of the Treasury Department.

Mr. McCLEARY. Do you contend that a man sets up as a defense this United States license?

Mr. HENDRICKSON. They do and they frequently deceive the jury.

Mr. McCLEARY. They do not deceive the court?

Mr. HENDRICKSON. No, sir; if the Federal Government can not protect a man in the exercise of the privilege it pretends to sell him, on what principle does it demand that such persons shall pay a tax. A tax is supposed to be a tax on legal business and if it is not legal, it is not a business. On what theory can the Federal Government demand of a man to pay a tax when that very receipt may get him into trouble? It may be used to convict him if it can be used outside the rule. On what theory can the Government say, "you must pay a tax," when it is powerless to protect him. I say if they can not protect him in the exercise of the privilege they are pretending to sell him then there is no theory on which that tax can be demanded.

Mr. McCLEARY. The prosecution comes first for failure to get the United States license or the State license?

Mr. HENDRICKSON. Either one. He is supposed to have both when engaged in the liquor business.

Mr. BOWIE. It would not make any difference which one he got first, he should not sell until he had both.

Mr. HENDRICKSON. The Federal Government seems to have recognized the principle that if they issue the tax receipt the people should be protected, and therefore they issue this rule.

Gentlemen, it is creating an immense amount of lawlessness. I think that is beyond question in all States, whether they have the dispensary or prohibition or license. In Mr. Dalzell's State, I have been told, and I live right near the border, that the prosecution of a large number of dealers, as shown by the court records, has been for selling without a license at all. They have the Federal tax receipt. No man cares to violate the Federal law. He has got to have his tax receipt. They do not always exhibit it on the walls; they put it in their pocket, and the Government having received the \$25 that is charged is not concerned about their exhibiting it on the walls of their place of business. Many of them go along the rivers. We have a lot of floating river saloons on the Potomac in my neighborhood, and it seems impossible to get them out of the State. They defy the railroad companies and the canal company, etc., with that which they get for \$25, paying it into the Treasury of the Federal Government. We ask that the States may be untrammelled. Let them try what policy they may. They have the constitutional right to do it under the reserved police powers. Let them try the dispensary, high license, low license, or prohibition, and let there be no interference on the part of the Federal Government.

How would you gentlemen regard it if the States were to attempt to interfere with smugglers, moonshiners, or counterfeiters? Suppose a State should say that a State officer should not be brought into a Fed-

eral court to testify whether a man had a local license; how would Congress regard that? But is it any less censurable than that the Treasury Department should defy the police powers reserved in the States and stand with the lawless in the administration of State liquor laws?

Mr. BOUTELL. What ground does the Supreme Court give for holding that the administrative officer of the Government can prevent an officer from giving testimony by the issuance of a rule?

Mr. HENDRICKSON. The Government is sovereign, and the Supreme Court says that they have nothing to do with the policy of the Government.

Mr. HUMPHREYS. Under the section which says that the Secretary of the Treasury shall issue "such orders as he may deem best calculated to promote the public business and secure the Government and private persons from fraud and loss." That is the language of the statute. Under that the Treasury Department issues an order forbidding these people to give this testimony, and the Supreme Court said in the Bosce case "that he had the right to make that rule, and that it was a reasonable regulation."

Mr. HENDRICKSON. We may differ very widely whether the dispensary or local option or prohibition or license, high or low, is the best policy, but I do believe there is one point on which we can agree, and that is what we are asking, that lawlessness shall not be recognized, whether in license, prohibition, dispensary, or any other portion of the United States, and that is what we ask for in this bill.

Mr. HUMPHREY. What is the difference in the position, in morals if not in law, of the Revenue Department, when it declines to testify in these cases, and that of the gentleman in New York who declined to give information in the insurance scandals?

Mr. HENDRICKSON. I think there is a very striking analogy.

Mr. Smith, in the Philadelphia Press of December 28, says editorially:

It has long been in the nature of a scandal that men forbidden to sell liquor by the law of their State were nevertheless able to get what they regarded as a Federal license to do an illegal business.

Mr. WILLIAMS. Right there. In answer to the gentleman from Illinois, here is what the Supreme Court says, Judge Harlan rendering the opinion, in the case which I cited before:^b

This brings us to the question whether it was inconsistent with law for the Secretary to adopt a regulation declaring that all records in the offices of collectors of internal revenue or any of their deputies are in their custody and control "for purposes relating to the collection of the revenues of the United States only," and that collectors "have no control of them and no discretion with regard to permitting the use of them for any other purpose."

Giving the regulation which I read a moment ago. Here is what the court says:

There is certainly no statute which expressly or by necessary implication forbade the adoption of such a regulation. This being the case, we do not perceive upon what ground the regulation in question can be regarded as inconsistent with law, unless it be that the records and papers in the office of a collector of internal revenue are at all times open of right to inspection and examination by the public, despite the wishes of the Department. That can not be admitted. The papers in question, copies of which were sought from the appellee, were the property of the United States, and were in his official custody under a regulation forbidding him to permit their use except for purposes relating to the collection of the revenues of the United States.

^a Bosce v. Comington, 177 U. S., 459.

^b Bosce v. Comington, 177 U. S. p. 469, *et seq.*

Reasons of public policy may well have suggested the necessity, in the interest of the Government, of not allowing access to the records in the offices of collectors of internal revenue, except as might be directed by the Secretary of the Treasury. The interests of persons compelled, under the revenue laws, to furnish information as to their private business affairs would often be seriously affected if the disclosures so made were not properly guarded.

And it then goes on, but the part that I wanted to call your attention to especially was that they put it upon the distinct ground that there was no law which forbade by its terms or by a necessary implication the adoption of such a regulation by the Treasury Department.

Mr. HENDRICKSON. This editorial by Charles Emory Smith, ex-Postmaster-General, I commend to the committee:

FEDERAL AND STATE LIQUOR LAWS.

It has long been in the nature of a scandal that men forbidden to sell liquor by the law of their State were nevertheless able to get what they regarded as a Federal license to do an illegal business. This "Federal license" is merely a receipt for the payment of Federal internal-revenue taxes. If these are not paid the Federal Government makes trouble, and men who are willing to defy the State or local authorities prefer to purchase immunity from Federal interference by conforming to the requirements of the United States statute.

The prohibitionist States complain of this bitterly, and it is also unfriendly to high-license legislation. Representative Pearre, of Maryland, has introduced a bill forbidding the Internal-Revenue Service to give a receipt for the payment of tax by a retail liquor seller unless the latter has a local license. In prohibition States this would stop all Federal revenue and tax receipts to retailers, for they are forbidden by State law. In high-license States the "speak easies" could not get Federal tax receipts.

As the Federal Government imposes heavy penalties—\$5,000 fine and two years imprisonment—for carrying on the business of a retail-liquor seller without paying an internal-revenue tax, it is assumed that the Federal Government would become a powerful auxiliary to the States in restricting or forbidding the sale of liquor. The anomaly and scandal of the Federal Government taxing and recognizing as legal what the State prohibits would be taken away, but the Federal Government can hardly be expected to perform State police duty, and after refusing to accept a tax prosecute a man for not paying it.

The Pearre bill, nevertheless, is a good one, and though its passage might cost the Federal Government some revenue, it would take away from illegal liquor selling in States an apparent Federal sanction and bring State and Federal law on liquor selling into greater harmony.

Mr. HENDRICKSON. The spirit of lawlessness and the increase of crime is becoming a serious question. In free governments, where those who have come out from oppression are all too liable to mistake license for liberty, there is every reason for all the functions of the government being united in the support of law and order. Lawlessness encouraged in one direction against a particular law will sooner or later manifest itself against all law. If the lawless are to be encouraged by the Treasury Department in their opposition to State liquor laws, it is not at all unlikely that the same lawless spirit will manifest itself against Federal law, and all law, as soon as occasion arises. The highest interest of government can only be subserved by all branches uniting for the suppression of lawlessness.

STATEMENT OF HON. SYDNEY J. BOWIE, A REPRESENTATIVE FROM ALABAMA.

Mr. BOWIE. Mr. Chairman and gentlemen of the committee, I intend to be very brief, because nearly all I had in mind to say has already been said. I simply want to say now that I have introduced two bills,^a

^a H. R. 6014, 8465, 6013, 8464. (See pp. 77, 78.)

one of which is to require the giving of testimony along the line of Mr. Humphrey's bill, and the other prohibiting the issuing of special tax stamps to retail and wholesale dealers in liquors in prohibition districts. I have an amendment which I think ought to be added to the last bill, No. 8464, which I suggest in these words:

Nor shall any such special tax stamp be issued to any person except those who exhibit to the collector a State and municipal license where the same is required.

Mr. HILL. I wish you would tell us why you think that the Federal Government should surrender its right or delegate its right to issue a tax receipt to the State, and tell us why publication is not satisfactory to you.

Mr. BOWIE. Yes, sir; I will endeavor to do so. The proposition which I make is this: We have a government of divided powers. The Federal Government has exclusive jurisdiction within certain limits and the State government has the balance of the jurisdiction, and whatever is not left to the Federal Government or reserved directly to the people, is within the power of the State legislature and the judicial and executive departments. Now, then, under the plan of government which we have, the police power is left with the States. The Federal Government has a taxing power for certain Federal purposes, but the Federal Government ought not to use the taxing power in any way to undermine or destroy the rightful reserved jurisdiction of the States.

The CHAIRMAN. It is in the power, if I understand your position, of the States of the Union to absolutely cut off from the Federal Government its entire revenue from taxes levied on the sale of liquors?

Mr. BOWIE. If the State should absolutely prohibit the sale of liquor and if that prohibition should be made effective, it would unquestionably take away the revenue-collecting power to that extent; and more than that, they are doing it in Maine and have done it in every State for the last fifty years to a greater or lesser extent. Every time a restriction is thrown around licenses, either in a limited territory or throughout a State, and every time the sale of liquor is restricted or reduced, to that extent the Federal revenues are reduced.

Mr. BOUTELL. Can you give us the provisions of the acts of 1794 and 1813?

Mr. BOWIE. I do not remember the provisions.

Mr. BOUTELL. The act of 1794 says:

Provided always, That no license shall be granted to any person to sell wines or foreign distilled spirituous liquors who is prohibited to sell the same by the laws of any State?

Mr. BOWIE. That is the point.

Mr. BOUTELL. That is the same as the law of 1813?

Mr. BOWIE. Yes, sir; that is exactly it. My proposition is that the United States Government has no right to raise revenue from an illegal business. For instance, we know the moral wave which swept over the city of New York two or three years ago when the public discovered that the police of the city of New York were selling indulgences in certain forms of crime, that they were protecting gambling houses, and that they were protecting certain houses of ill repute, and there was indignation, not only in New York, but all over the United States at the disclosures. If it be wrong for the policemen of the city of New York to enter into a combination or conspiracy to break the laws of New York it seems to me it would be equally a wrong for

the Federal Government to get a part of its revenue from whom—from persons engaged in a lawful business? Not at all. From persons engaged in destroying the very foundation of our security, which is the police powers reserved exclusively to the States.

The CHAIRMAN. So far as the Federal Government is concerned it is a lawful business, absolutely so.

Mr. UNDERWOOD. Can any law be lawful that is prohibited by a State?

Mr. BOWIE. Most assuredly, it would be unlawful so far as the State is concerned.

Mr. CLARK, of Florida. Is a business lawful which the United States can not authorize?

Mr. BOWIE. Could the United States Government issue a license to commit murder?

Mr. CLARK, of Florida. The law says that the United States can not authorize the carrying on of this business; that it is within the powers of the States, and the United States can only receive a special tax from a person who is to engage in the business in the State.

The CHAIRMAN. The tax must be uniform over a certain business all over the country. The logical result of your position is that the United States Government is absolutely prevented from levying any tax upon the sale of liquors in the United States.

Mr. PEARRE. But must not the business be established in the State before the Government can tax it?

The CHAIRMAN. I do not know whether it is important that it should be established or not.

Mr. BOWIE. Suppose the statute in Maine had been absolutely effective—suppose that no liquor was drunk in the State of Maine—would not the Government's revenues have been affected to the extent of the difference between that which they formerly received and none at all? When the Dow law was passed some years ago, suppose every drop of liquor had been absolutely prevented from being sold in the State of Maine instead of simply a partial enforcement of the law, would the Government have gotten any revenue out of that State?

Mr. WILLIAMS. Is there any such thing as the lawful carrying on of a liquor business except by State law?

Mr. BOWIE. Absolutely no.

Mr. WILLIAMS. Wherever there is a State law prohibiting it, it is an unlawful business?

Mr. BOWIE. Necessarily.

Mr. WILLIAMS. Then, if the Federal Government issues a license to somebody to sell liquor in a State where it is prohibited, the Federal Government is getting its revenue from parties who are engaged in an unlawful business?

Mr. BOWIE. Yes, sir; just as much so as the policemen were in New York.

Mr. WILLIAMS. Just as much as if Congress had forbidden the sale of liquor in the District of Columbia and the internal-revenue officer issued a license?

Mr. BOWIE. Yes, sir.

Mr. HILL. I think that Connecticut absolutely forbids the sale of oleomargarine. Do you mean to say that the Federal Government—if a man comes to the Federal Government and asks for a license to engage in that business—that it should not be issued to him?

Mr. BOWIE. If the State of Connecticut has the right to prohibit the sale of oleomargarine, as I have no doubt it has, I say that under the law of comity and decency and the relations existing between the Federal and State governments, the Federal Government ought not to lay its hands upon it so long as the State is within the exercise of its constitutional power.

Mr. BOUTELL. Is it a function of the United States administrative officers to attempt to interpret the State laws which may be held unconstitutional or may be put to one side? Notwithstanding the fact that this license is issued, is there not something to be said on this side? A man comes from Alabama and goes to the United States administrative officer and says he wants to pay a tax for the selling of liquor. The United States administrative officer does not attempt to pass upon what the constitutionality of the law is. He gives him a receipt for the tax. Now then, that tax receipt, so far as the legal selling of liquor is concerned, is not worth the paper it is written on if the laws of the State of Alabama are enforced. Notwithstanding the holding of that receipt, have you not the entire machinery, the executive and judicial authority of the State of Alabama, to prevent his selling it and to punish him if he does sell it?

Mr. BOWIE. Unquestionably. That question has been answered by every gentleman who has heretofore spoken, and a full explanation has been given. Of course it is no legal protection to a man, it is an illegal protection.

Mr. McCLEARY. Pardon an interruption. Do you contend that the United States can have other than uniform taxation throughout the United States?

Mr. BOWIE. Certainly not; but wherever a business is illegal the Government is not required to get revenue from an illegal business.

Mr. UNDERWOOD. The Government does not collect anything from the oyster boats in Minnesota?

Mr. BOWIE. No, sir.

Mr. CLARK, of Florida. The United States denounces smuggling?

Mr. BOWIE. Yes, sir.

Mr. CLARK, of Florida. The bringing of Cuban rum from Cuba to Florida is a violation of the United States law. Suppose the State of Florida should receive from the smugglers a special tax to carry on that business, would not that be on a par?

Mr. BOWIE. I think it would be on a par exactly. That is the proposition.

Mr. HILL. Supposing that Florida was not a prohibition State—

Mr. CLARK, of Florida. It is not.

Mr. HILL. And the State authorities knew that smuggled rum was being sold by other than licensed saloons, would it not be the function of the State of Florida to prosecute these smugglers?

Mr. CLARK, of Florida. It would unquestionably be the duty of the people of the State of Florida, as a part of this Union, to undertake to uphold the law and order and to assist the Federal Government to convict those people.

Mr. BOWIE. If it has the evidence.

Mr. WILLIAMS. It would unquestionably be the State's duty not to suppress the testimony?

Mr. BOWIE. Unquestionably.

I mean to get before this committee, if I am allowed to do so, something of the enormity of this evil throughout the United States, and to show that it does not apply to sections; it is not an evil in Alabama, or Florida, or Mississippi, but it is an evil that permeates the United States. In order to get that information I addressed letters, a week or so ago, to each governor in the United States to ascertain the actual number of licenses for retail establishments in the several States and Territories of this Union. I here insert a copy of the same:

DEAR SIR: I am anxious to know the actual number of retail liquor licenses in your State during the last fiscal year, if it is possible to obtain the same. I would be very much obliged if you will hand this request to the proper official and ask that the information be forwarded me in the franked envelope inclosed.

I want to compare the number of licenses issued by each of the States with the number issued by the Federal Government, to see the extent to which the latter is in the excess of the former. The facts in my possession show that the Federal Government issues many more licenses than are issued by State and local authorities, and to that extent it plainly indicates the illegal traffic in spirituous, vinous, and malt liquors.

I do not believe that the Federal Government should directly or indirectly aid or countenance the known violation of the State laws and police regulations. The idea of the Federal Government obtaining a part of its revenues through a known violation of the State laws is to my mind highly improper, and believe if the facts can be properly presented that it will be possible to have the Federal and local statutes conform as they ought in a matter of this sort.

Thanking you in advance for the favor, I remain,

Very truly, yours,

SYDNEY J. BOWIE.

My letters only went out recently, and, consequently, I have replies only from eight States. They are scattered geographically throughout the Union and show the extent of the difference between the issuance of Federal licenses and State licenses. In Alabama there were 763 lawfully licensed retail establishments, and the number of Federal licenses was 1,592, a difference of 829.

MR. HUMPHREYS. Issued to retail dealers?

MR. BOWIE. Yes, sir; showing that there were 829 men engaged in the illicit sale of whisky in the State of Alabama.

THE CHAIRMAN. How many prosecutions?

MR. BOWIE. I wish I had a letter from a judge in Dallas County in regard to this "blind-tiger" business and indorsing this bill. I will get the letter and hand it to the stenographer to insert in the record as a part of my remarks. It shows the difficulty of the prosecutions, as Mr. Clark has pointed out.

The letter referred to is as follows:

THE CITY COURT OF SELMA,
Selma, Ala., January 1, 1906.

HON. SYDNEY J. BOWIE, *Washington, D. C.*

DEAR SIR: I desire to express my approval and appreciation of your effort to have Congress prohibit the issuance of United States license for the sale of liquor in districts where such sales are prohibited by State laws.

The issuance of these licenses has given much encouragement to violation of the prohibition laws in Dallas County and I have no doubt throughout the State of Alabama and elsewhere.

In January, 1904, a large number of persons were indicted in the city court of Selma for running "blind tigers." It being almost impossible to secure sufficient evidence to convict them (although most of the defendants sold liquor openly and notoriously in violation of the law), the grand jury sent one of its members to the office of Collector Thompson, at Birmingham, and he there ascertained that at least 100 citizens of Dallas County outside of Selma had taken out United States liquor licenses. On the refusal of Collector Thompson to testify the court applied to Secretary Shaw, but was informed that it was against the rules of the Department to furnish evidence of that sort. While evidence of the United States license might

not of itself be sufficient to convict, it would have been very strong proof to corroborate other evidence, and if license in such cases should be refused I believe that the fear of prosecution by the United States authorities will deter most of the violators of this law in the future. I sincerely hope that your measure will become a law, and I believe that it will meet with the hearty approval of all good citizens of this State.

Aside from the question as to whether prohibition laws are wise or not, as long as they are the law their constant and general violation is a menace to law and order, breeding a contempt for law, encouraging perjury, and is demoralizing to the highest extent.

With kindest regards, I am, yours truly,

J. W. MABRY.

MR. BOWIE. The next State I have is the State of Colorado, and there are 2,600 State licenses, so the governor writes, and there are 3,220 Federal Government stamp receipts, which makes a difference of 620 in the comparatively small State of Colorado. I speak of it as small as far as population is concerned. In the State of Delaware there are 423 special tax receipts issued by the Federal Government and 290 issued by the State; 133 illegal places for the sale of liquor in that State. In Georgia there are 1,896 Federal licenses and 930 State licenses, or 966 notorious violators of the law who are protected by this Federal Government in refusing to give this information. In Kentucky there are 4,052 Federal licenses, 1,983 State licenses, and 2,070 "blind tigers." In Louisiana there are 4,558 Federal licenses, 1,752 State licenses, and 2,806 "blind tigers." In Maine there are 640 Federal licenses, no State licenses, and 640 "blind tigers. In Michigan—I said these figures were from all over the Union—there are 8,860 Federal licenses, 5,554 State licenses, and 3,306 "blind tigers."

MR. HUMPHREYS. In the State of Mississippi there are 123 licensed saloons and 557 "blind tigers."

MR. BOWIE. There are eight States I have named, exclusive of Mississippi, in which there are 11,370 illegal resorts for the sale of whisky.

Now then, if they are average States, and I submit that this data comes from different sections of the Union, that would indicate over 70,000, if the proportion is the same, men engaged in the illegal traffic in liquor throughout the United States.

MR. HUMPHREYS. Let me make a statement. Secretary Taft said in his address to the Yale law class last summer that there were 808 homicides in all the States of this Union, of which number 108 were executed. That in 1904 there were 848 homicides, of which number 116 were executed. I wrote to the judges of the criminal courts in Mississippi and asked them to give me information as to the number of homicides traceable to "blind tigers." I have a number of replies, and they say that on the average 35 per cent of the homicides in that State, which have increased, I am sorry to say, is due to the business that the United States Government permits and aids by declining to testify.

MR. PEARRE. And prevents the State from stopping.

MR. BOWIE. There are 829 places for the illegal sale of liquor in Alabama. At \$25 that would amount to a little over \$20,000 for Federal licenses. The State of Alabama could better afford to pay \$100,000 out of its treasury than to have this infamous business continued.

MR. HILL. What is your State license fee?

MR. BOWIE. I do not remember exactly, but my recollection is the State license is about \$300 per annum, to which must be added county and municipal licenses.

MR. UNDERWOOD. In many places it amounts to \$600 or \$700. I think that is the rate in Birmingham.

Mr. BOWIE. In the town in which I live the municipal license is \$1,000.

Mr. SULLIVAN. Does the aggregate of tax receipts which you mention represent the tax receipts for all purposes, the druggist, or the painter who uses oil or alcohol or spirits, for all purposes?

Mr. BOWIE. The figures differ. The figures I gave are for retail liquor dealers; that is what I asked for from the States, but the Federal retail liquor licenses alone exceed those figures by about 100 per cent. The information I have is from the report of the Commissioner of Internal Revenue, and it is under the head of retail liquor dealers, on page 64, in the first column.

Mr. SULLIVAN. I want to ask also if the gentleman happens to have information—I ask merely to get the information—whether or not in the State of Maine and other prohibition States the statutes of those States do not permit druggists to sell liquors for medicinal purposes, and if so I take it a tax has to be paid to the Federal Government. To that extent a number of persons would be doing a legal business in selling liquor for medicinal purposes and that would reduce the number of illegal sellers.

Mr. BOWIE. It would in such a case, but there is no such law in Alabama.

Mr. HUMPHREYS. In Mississippi everybody has to pay the State license. In one district there are more than 900 of these tax receipts—that is, of the retail liquor dealers—and only 518 liquor saloons. There were 20 convictions last year. That does not include the druggists; I do not know how many there are.

Mr. BOWIE. I just want to make one remark in conclusion. At last we are one people, and the purpose we all have is the enforcement of the law. We can reach this question this way. The other way has been tried, and it has been found that we can not reach it unless we get some relief from the Federal Government in either one form or another. I believe that both bills ought to be passed. I do not believe that the Government of the United States ought to get a part of its revenue through aiding a known violation of the police regulations of any State, and I say that irrespective of any question of prohibition or temperance, or irrespective of how any man feels upon that subject. I never favored forcing prohibition upon a community where public sentiment opposes it—in other words, I favor local option; but wherever the public sentiment of a community has decreed that liquor shall not be lawfully sold, then the United States Government ought to put its own strong arm around the State's authority and assist the State as far as it can, at least by not furnishing aid and comfort to the men who are engaged in that kind of business.

Mr. BOUTELL. If the United States Government should not issue any license in the prohibition States, do you think that would solve the question, put an end to it?

Mr. BOWIE. I think it would settle nine-tenths of it. I do think that some people under any circumstances would violate the law, just as the law against murder is sometimes violated.

Mr. CLARK, of Missouri. Down in Indian Territory they take the chance of going to the penitentiary for selling one drink of liquor to an Indian, and yet there are violations.

STATEMENT OF HON. A. A. WILEY, A REPRESENTATIVE FROM ALABAMA.

Mr. WILEY. I want to indorse what has been said and to say that there is a very great demand for some relief along the line indicated.

Mr. Chairman, indulge me a few moments to say a word in favor of my bill.^a I am not wedded to any special measure, but some legislation to suppress the evil complained of is imperatively demanded.

The newspaper editorials, memorials from temperance organizations, resolutions from religious bodies, and letters from prominent and influential gentlemen on file with this committee, earnestly indorsing the bill I had the honor to introduce at an early day of the present session on this subject, speak more eloquently than I in favor of the proposed legislation, and with better reason than I can assign (particularly within the narrow time limit set down for discussion this morning) why needed relief should not be withheld.

The granting of a legal permit to sell intoxicating liquors, either by Federal or State government, is not a vested or contract right, but a mere privilege, which can be taken away or revoked by the sovereign power at its own pleasure or discretion and at any time, even after a license has been issued to the vendor, and that, too, for a cash consideration paid by him under a valid legislative enactment, which expressly authorizes a sale by him upon his paying for and taking out a license to carry on such business.

The supreme court of my State (Alabama), in Powell's case, which was decided several years ago, held that when the defendant had paid for and taken out a license to sell spirituous, vinous, or malt liquors and other intoxicating beverages in the county of Lowndes, under a law then in force authorizing such sale, and subsequently the legislature repealed the law without providing for any refund of the tax, he was not entitled to recover the license money so paid by him; nor could he be permitted any longer to carry on the business of a retail liquor dealer. Under these circumstances our highest judicial tribunal affirmed a judgment of conviction rendered against the defendant in the trial court.

In reaching this conclusion our supreme court decided, of course, that there was no such contractual relations between the defendant Powell and the State of Alabama as would make that provision of our Constitution against impairing the obligations of a contract operative or applicable, and that the State in granting authority to Powell to sell liquors in Lowndes County had not entered into a binding contract with him nor conferred any vested right upon, but had merely issued to him a permit or license revokable at the option of the Commonwealth.

I did not intend, gentlemen, to address the subcommittee along this line, and would not have thought to do so now but for the suggestion, which I understand has been made before you, to the effect that if the United States Government should refuse, even under an inhibitory law of Congress, to give a permit to a particular person to sell liquors in a community in which such sale is legally prohibited, then that person could not be convicted whenever tried in a Federal court, for the reason that he, having applied to the Government for a license and

^a H. R. 3074 [see p. 79].

not having obtained it, would be authorized by natural right to proceed to do business without it, or words to that effect, and that publicity was the only avenue of hope left open to us. Surely this position, in my judgment, is untenable; an entire misconception of the law as applicable to this class of cases, certainly as I understand it.

Now, in conclusion, I desire to emphasize what has already been so well said by other gentlemen who have addressed the subcommittee upon the subject under consideration. Upon no principle of justice, equity, or fair dealing can this great Republic be justified in granting a legal permit for a moneyed consideration to any person, no matter who he may be, whether of high or low degree, to violate a State law in any community throughout the broad and wide confines of this country (I care not where that locality may be) in which prohibition prevails. To do so, in plain English, is to encourage and sanction ab initio the infraction of State statutes by vicious men, whose brazen faced effrontery stalks forth for public imitation in defiance of law; men who are afraid to face the constituted power of the Federal Government as displayed by Federal courts, because, forsooth, they feel sure of conviction by Federal juries, drawn from outside the vicinage where the offense was committed, selected from neighborhoods far away from corrupting local influences and environments.

These "deaf falls" and "blind tigers," operated as they are in violation of State laws, carried on clandestinely in places where police protection can not be afforded, patronized and supported by ignorant and venal men, for the most part (particularly in what is commonly called in Alabama "The Black Belt") by the worst element of a negro population, are utterly demoralizing, as well as destructive of the repose and well being of society, and are productive of various and numerous crimes. These dens of iniquity are veritable hotbeds of licentiousness. They lead to untold evils, such as murder, arson, rapine, and robbery, and entail upon rural communities every earthly ill and human woe.

I have not exaggerated the facts, but state the naked truth. For these reasons there is an overwhelming sentiment amongst the people I have the honor to represent in Congress behind this or any other bill which will have even a tendency to bring them freedom from the baneful condition of affairs existing in several localities in my Congressional district. If there is pending before this subcommittee any better, wiser, or more satisfactory measure than mine, then pray report it favorably and I will be content.

STATEMENT OF HON. R. B. MACON, A REPRESENTATIVE FROM ARKANSAS.

Mr. MACON. Mr. Chairman and gentlemen of the committee, I introduced bill H. R. 273 [see p. 79] on the first day of the Fifty-ninth Congress. I introduced it during the Fifty-eighth Congress, but it has been modified by reason of a little colloquy with the distinguished gentleman from Ohio, General Grosvenor, upon the floor of the House when I attempted to make a speech in support of it in the last Congress. He took issue with me and contended that the Government did not issue a license. I of course recognized that technically speaking the Government did not issue a license by name, but I took the ground that when it authorized an individual to do anything, it did license him in a sense. Therefore I think it was a technical objection, but the

bill, No. 273, introduced in this Congress, seeks to prevent the collection of a special tax.

Of course, you gentlemen have the bill before you and are familiar with its provisions, and I do not know that I can add much light to this question, because there has been so much said upon it, but I do desire, gentlemen, to give a sort of an account of the faith that was within me and which prompted me to prepare this bill and introduce it.

I live in a State where we have a law which prohibits the sale of liquors unless a license is procured therefor; that wherever a majority of the voters of a given township or ward at a regular election vote against license—and the question is always submitted at every general election—then no license can be issued in that ward or township. Wherever a majority of the adult citizens of a community petition against the sale of liquor in a township or ward no license can be issued in that township or ward. Therefore, that being the law of my State, I insist that any encouragement of its violation is a perpetration of a great injustice upon the communities in which law is sought to be enforced.

I do not care who encourages it, whether it be the Government of the United States or some individual, it is wrong, yes, a great wrong committed against the rights of the people of the States. I know from my experience in the State of Arkansas that persons are encouraged by the Government of the United States to enter into the illicit sale of liquor on the same principle, gentlemen, that the parent can encourage a child to do wrong whenever he tells him to do it. The child is induced to do wrong because he feels that the parent is greater than anybody else, in his judgment, and the average citizen who will engage in this kind of business feels that when he is armed with authority from the Government to sell liquors he is protected by the strong arm of the Government, just as the child feels that it is protected by the parent, and in that way is encouraged to a large extent to violate the State law.

It has been said here that it would affect the revenues if this tax was not collected in communities where the sale of liquor is prohibited by State law. According to the statement that Mr. Bowie just made, there are about 70,000 tax receipts which would not be issued, and that much revenue would not be collected. To multiply that number by \$25, the price of the tax, would be something like \$1,750,000. That, in a great country like ours, should not have any bearing whatever upon legislators, because under no circumstances can they afford to measure the morals of the States and of the various communities of the country by dollars and cents. We all recognize that whenever we undertake to measure the moral standard in any community by the dollar and cent proposition we prostitute the morals of the community, and the money we receive becomes blood money in a sense.

I will say here in passing, gentlemen, that if the officers of the Government from the head of the Department down to the one who issues the receipts and collects the money, the deputy revenue collector as he goes around over the different communities and whose duty it is under the law, would see that the tax receipts issued by him or them are posted in a public place, as the law directs, where it could be seen, if they would only live up to the requirement of the statute as it exists to-day, then the States would have no trouble with "blind tigers."

Mr. HILL. Suppose you take that duty away by saying that there shall not be any license issued in that State?

Mr. MACON. It simply discourages that feeling which I have spoken of because these people want authority of the United States before they sell liquor illicitly.

Mr. HILL. Suppose you take that away from the United States by saying that there shall be no receipts issued in the State of Alabama?

Mr. MACON. Then all those who sold liquors without would suffer the penalty provided for selling without first having paid the special tax.

Mr. HILL. But the bill simply provides a penalty for the revenue officer.

MACON. Look at the third section of the bill. I call your attention to that section which provides a penalty for the individual.

Mr. HILL. Does it not simply provide a penalty for the United States officer for issuing this tax receipt, but there is no penalty for the individual for selling without his license?

Mr. MACON. Just read section 3. I will read it. It provides:

That any person who shall sell any foreign or domestic distilled spirits, intoxicating liquors, wines, or any compound thereof in any of the States or Territories of the United States of America without having first paid the special revenue tax required of retail liquor dealers under existing law, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than \$100 nor more than \$1,000, and in addition to such fine shall be imprisoned in the jail house of the county or parish in which said offense was committed for a period of time not less than sixty days or longer than one year.

Mr. HILL. In other words, you delegate the power of the Federal Government to the State, but who shall say what is a crime and what is not?

Mr. MACON. The proper officers, of course. Already there is a penalty for the sale of liquors without first paying the special tax, and I simply provide a change thereof by providing that the punishment, if it is imprisonment, shall be in the county jail or parish of the county or parish in which conviction is had, and thereby keep the subject who has been guilty of violating the law in the community in which the violation took place, and not impose him upon an innocent community. That is about the only change in the law.

Mr. CLARK, of Missouri. The whole substance of your bill is to first prohibit the United States Government from issuing these tax receipts in a community where the sale of whisky is prohibited by law?

Mr. MACON. By State law.

Mr. CLARK, of Missouri. Then, in the second place, if a fellow goes there and sells it the United States Government catches him for selling it?

Mr. MACON. Yes, sir.

Mr. CLARK, of Missouri. Yes, sir; I just wanted to bring out what was in your bill.

Mr. HILL. You want to prevent them from taking the receipt and punish them for not having it, and have that all depend upon some other power?

Mr. MACON. The State law provides that before any person shall engage in the retail liquor business he must first procure a State and county license. The laws of the States provide that liquor can be sold in them upon the payment of a license, but it is provided in the same law that under certain circumstances and conditions it can not be sold

in this or that particular locality. Therefore, when a man sells in this or that particular locality, although having the evidence of the law, that on its face provides for a license, State and county, he can be convicted and punished for having sold it in this or that particular locality, even though he tendered the money for the license and the law indicated that he was entitled to it upon payment of the proper sum therefor. Therefore, this provision is not any more inconsistent than that, and I insist that you can not find any inconsistency on the part of the Government if it follows the line laid down by the State.

Mr. BOUTELL. I would like to ask whether you have the same trouble in Arkansas that has been alluded to in these other States of securing convictions by State juries?

Mr. MACON. Oh, yes, sir; we have that trouble everywhere.

Mr. BOUTELL. It would be mighty refreshing if we could find one State where the State law is being enforced distinctly.

Mr. MACON. To start with, in Arkansas our judges are elected by the people.

Mr. BOUTELL. You believe in that?

Mr. MACON. Yes, sir. Our judges are elected by the people, and they are human beings.

Mr. BOUTELL. Do you mean that we had better go back to the Jefferson idea and have the judges elected or appointed for life?

Mr. CLARK, of Missouri. Then there is the prosecuting attorney system. If there is a constitutional convention in Missouri I intend to go to it and endeavor to have the whole system remodeled.

Mr. MACON. Following up the question asked by the gentleman from Illinois, I have just spoken about the judges. The sheriff then is elected by the people, and you will find, gentlemen, that the fellows who sell liquor illicitly are the most active citizens in the county on election day. They go to any sort of extremes. The weather never grows too cold or too hot, too rainy or otherwise for them to go out and help elect a man sheriff of the county who they believe will look the other way when they are violating the law.

I suppose that exists in every part of the United States. I think my people are a fair sample of the people of the United States, but I do know that condition exists, and whenever you find one of these active fellows on election day, an active man in politics, he always has a good many friends around who drink his liquor and support the candidate he names. You will find these active fellows going from one end of the county to another in support of a sheriff who will look the other way, whereas the good people are not so active along that line. They never organize in that way, and hence they will divide their support, and a great many of the good people will vote for this same sheriff, and you will find in nine cases out of ten that the man for whom the "boot-leggers" are banded together is elected sheriff, and therefore when it comes to selecting juries to try them you will find, gentlemen, there will be some fellow on the jury who can easily see that the "tiger" has a reasonable doubt in his favor. You will find one of the jurors under obligations to him one way or the other, and you will find him searching for a reasonable doubt in favor of his friend, and the result is that you either have an acquittal or a hung jury.

If they are prosecuted in the United States courts they are taken away from these local influences and conditions, they are carried among strangers, and they have a judge who is not under any obligations to

any man on earth, unless it be the man who appointed him, and they have a marshal to bring in juries that is under no obligation to them at all, and they have juries not under obligations to them, and therefore you have a clean-cut process of trying the individual, the lawbreaker.

Mr. BOUTELL. Suppose we pass this law and prohibit the issuance of Government licenses, and then make it a crime to sell liquor without a license and the man is brought into court before a Federal jury and Federal prosecuting attorney, and he furnishes his proof to the effect that he has sold liquor without a license. Then the prosecuting attorney rests and the man goes on the witness stand and says: "I am quite ready to buy a license and I have been ready all the time."

Mr. MACON. I think under those conditions the court would instruct the jury to return a verdict of guilty.

Mr. BOUTELL. How much practical enthusiasm would there be in prosecuting such a case?

Mr. MACON. Quite enough to suppress the illicit business.

Mr. BOWIE. I think nine-tenths of them would quit business immediately.

Mr. MACON. I have not had the experience of Mr. Clark, who was prosecuting attorney, and I do not say that because I have not had the fortune or misfortune to hold that position; but I do say that in my opinion the prosecuting attorneys have tried to do their duty in the enforcement of law, and they are stimulated by the fact that they get a fee of \$25 for every "blind-tiger" conviction. They are human beings, too, you know.

These are the main reasons that I have to offer for the passage of this bill. I feel that it is an outrage for the Government to be an accessory before the fact to the commission of crime by any citizen of any community of this Union. I feel that it debauches the communities in which this illicit proceeding is allowed to be conducted, and I know it is an injury to the men who buy the licenses themselves, because they are often encouraged thereby to take the first step in crime, and we all know that more crimes generally follow the first step taken and lead up to the commission of crimes of the most crimson hue. I can not understand for my life how this bill could affect any legitimate right or privilege if it were passed. It would affect the revenues of the country, and while I have already expressed myself upon that question, I will say further, that I am a member of the church and therefore can not use the word I would if I did not belong to that divine institution, but with all due respect to you, gentlemen, and a due regard for my church connection, I will say, well—damn all such money as comes into the Treasury of this Government at the expense of the morals of the land.

In regard to the bill of my friend from Mississippi, Mr. Humphreys, I believe it ought to pass, because I do not think the Government of the United States ought to suppress testimony. I think it would be a wholesome thing to destroy the rule made by the Secretary of the Treasury that prevents the revenue officers from giving evidence in cases where the State is prosecuting, and where it is provided by State law that the tax receipt makes a prima facie case against the individual who has it.

The CHAIRMAN. Of course, that bill will not be necessary if we cut off the tax receipts issued by the Government?

Mr. MACON. I say this, I am not wedded to this bill, I am wedded

to the principle, and I do not care whether it is Macon's bill or Jones's bill, or anybody else's bill. I am in love with the principle, and I would like to see it carried out. I have no ambition along that line myself, none whatever, and if Mr. Humphreys's bill will accomplish that purpose pass his bill and let mine die in the committee; but if his bill will not do it then pass something of this character. Mr. Clark has one and so have Mr. Bowie and Mr. Pearre. Pass any of them, gentlemen, but for goodness sake give us some relief along this line.

STATEMENT OF HON. J. F. RIXEY, A REPRESENTATIVE FROM VIRGINIA.

Mr. RIXEY. The bill I introduced differs from all those that have been referred to except the one introduced by Mr. Clark, and it differs from his bill in some particulars. The bill that I introduced provides that there shall be no distilleries in a community where, by local option or the decision of the court, a barroom had been refused. I believe that gets at the gist of this whole matter. It is not for the Government to undertake to say in advance that it will issue license for a distillery in some localities and refuse them in others, but where the matter has been judicially or legally ascertained that the sale of liquor in a particular locality is forbidden, then that the Government shall simply recognize that fact and not allow a distillery to be located there.

If that law is passed you need not pass any law which provides punishment for the party who violates it, because the license will not be issued and the man who undertakes to sell in a community where he is forbidden by law will be handled by the State; he will be prosecuted by the State. I suppose all these bills have been suggested by some conditions which have come to the notice of the gentlemen who have introduced them.

This bill was suggested to some extent by conditions existing in my district. One county in my district is dry by local option. In other sections in the country districts licenses for barrooms have been refused by order of the court upon the ground that the people did not want barrooms; that the county crossroads stores were not fit places for barrooms; but liquor is allowed generally to be sold at the county seats. The result has been that where barrooms have been refused in the country districts men have come here and gotten licenses to enable them to establish distilleries. They then locate the distillery some distance from the railroad, frequently in the woods. As a rule, the better element in the community does not frequent these distilleries. As a rule, it is a rendezvous for the lower element.

Mr. McCLEARY. It is a natural distillery that they establish?

Mr. RIXEY. A distillery allowed by law.

Mr. DALZELL. A distillery that would cost any amount of money?

Mr. RIXEY. No; a brandy distillery costs practically nothing to start. In many places in my district they have fruit distilleries, brandy distilleries. Now, when they start the distilleries they secure a license to sell by retail, which does not let them sell in less quantities than a gallon; but, as a matter of fact, nine-tenths of these men will sell in any quantity that the people who come there to buy want it.

The only way to break it up is, not by providing penalties, but where the community has already broken up a barroom by a judicial decision or by a vote of the people, then that the Federal Government

shall recognize that condition and not put a distillery in that locality. Let it go somewhere else. Such a course would not work an injustice to anybody. I do not believe the Government would lose much revenue, but if it would, surely this Government could afford to lose the revenue of a few dollars for a distillery when the State loses its revenue of more than a hundred dollars for each barroom that has been broken up.

I know of instances of little crossroads having not more than fifteen or twenty houses where there were four barrooms before public opinion became so strong as to discontinue them, and now there are no barrooms there, but within a short distance a distillery will be located where, out of sight, anyone who wants brandy can get it in any quantity.

I could cite you to an instance that came before me, to some extent officially, where at the upper end of one of the finest counties in Virginia, where the court had refused to allow the sale of liquor, there is a distillery. The man who ran that distillery was recommended for the position of postmaster at that place. It is in one of the most desirable localities in Virginia. The man was about to be appointed when a committee came from this little town, and I went with them to see the Fourth Assistant Postmaster-General and told him the situation, and furthermore, that if he persisted in appointing this man that we intended to prove that this man sold to negroes and to everybody who wanted it, and that the place was a rendezvous on Sunday for the worst element that could be scraped together. He very promptly said he would not appoint him.

So it seems to me you ought to report some bill that will remedy this condition of affairs. I don't care whether you adopt my particular bill or not. If you do adopt it I would want to amend it in some particulars, because it refers to the conditions particularly in my district and my section of the country. It refers only to counties and towns, and provides that wherever in the agricultural sections of the country it has been settled by law that a barroom is not to be licensed, then that this Government shall not place in that locality a distillery, which is ten times worse than an open barroom. When I first introduced this bill, two or three years ago or more, it had some little notice in the papers of my district, and I received numerous letters stating that, in the opinion of the writers of the letters, a distillery in a local-option community was a great deal worse than an open barroom.

STATEMENT OF HON. JOHN A. SULLIVAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS.

Mr. SULLIVAN. Mr. Chairman, I find that there are several bills here, some which seek to prohibit the issuance of a tax receipt upon the sale of liquor in communities which vote against the sale of liquor; some which require the production of certified copies of the records of the internal-revenue department in courts in which complaints have been lodged against those charged with selling liquor illegally, and another bill which provides substantially in effect that the sale of liquor made by a person in one State C. O. D. to a person in another State shall lose the protection under the statute and the decisions of the Supreme Court which its interstate character usually gives it; in other words, the transportation of liquor from one State to another

C. O. D. shall be illegal if the place of destination of that liquor is a place where the citizens have voted against its sale.

The CHAIRMAN. That is the Williams bill.^a

Mr. SULLIVAN. That, I understand, is the Williams bill.

Mr. WILLIAMS. Where it is carried C. O. D., or in any other such manner as that, something necessary to complete the sale is left to the carrier.

Mr. SULLIVAN. Is that in the Williams bill?

Mr. WILLIAMS. Yes.

Mr. SULLIVAN. Then, I beg your pardon; I had not seen that.

I want to say that there is nothing in the character of the liquor business, as such, that makes it illegal. So far as the United States Government is concerned it is not an illegal business. Each citizen in a new country has the same right to engage in that business as in any other, as one of the natural inherent rights of a free citizen under a free government, and it comes to be illegal only when it is prohibited by the positive law of the State. Until the Government of the United States shall by its law prohibit the sale of liquor, then, in the view of that jurisdiction, it shall not be an illegal business. Now, in the license cases,^b as I remember them, the court said that the Government, by imposing a tax upon the sale of liquor, did not confer the privilege of selling liquor so as to afford immunity from prosecution by State officials if the State did not confer an authority upon the sale, but only imposed a tax—that is, an additional burden to that imposed by the State. But the gentlemen who are the proponents of this legislation insist that the tax which was declared by the Supreme Court to be an additional burden to that imposed by the State has in practice become a shield behind which liquor dealers illegally prosecute their business.

Now, I think anyone who heard the statements this morning of the gentlemen who favor these several bills must conclude that local government, so far as the suppression of the liquor traffic is concerned, is a failure; that what the gentlemen really seek by these bills is not to have Congress take the hands of the Federal Government off the States, but to permit the officers of the Federal Government to be used for the prosecution of liquor dealers, because, as they say, their own officers have been unable to secure prosecutions in their own jurisdictions.

Mr. HUMPHREYS. You say that the statements of the gentlemen here this morning would indicate that the local governments have failed, so far as the enforcement of the law is concerned, against unlawful retailing?

Mr. SULLIVAN. Yes.

Mr. HUMPHREYS. I will ask the gentleman if he thinks the statement of Secretary Taft, that in 1885 there were 1,800 homicides committed in the United States and in 1904 there were 8,482 homicides committed, shows that the States have also failed in performing their particular function in the prosecution of homicides in this country?

Mr. SULLIVAN. That takes me a little beyond the scope of my remarks. I was not discussing the ability of States to enforce the law against homicides, but the failure of the States to enforce their liquor laws, and I say it is the fair net result of the statements of the gentlemen who advocate this bill that they have not been able, that their

^a H. R. 405 (see p. 76).

^b License Tax Cases, 5 Wall., 462.

State officials have not been able, to enforce the laws against the illegal sale of liquor. Whether that has any connection with their ability to enforce the laws against homicide or not I do not know.

Mr. BOUTELL. He did not say 8,000 unpunished homicides at all.

Mr. HUMPHREYS. May I ask you another question there?

Mr. SULLIVAN. I would rather not—I don't think I have time. I don't think the question of homicide is strictly germane to the proposition I was laying down, namely—

Mr. HUMPHREYS. I understood the only inference of your statement was that the States had failed to enforce these laws against the sale of liquors. Why make that statement? What is your conclusion from that? That the law ought not to exist; that the States have made a mistake in attempting to have any such law as that? Now, if the States have equally failed to prevent the commission of homicide, would the gentleman say it is a mistake on the part of the State to attempt to prohibit them?

Mr. SULLIVAN. No, I would not. The gentleman has drawn one of the inferences which I will draw, namely, that the attempts to enforce liquor laws are unsuccessful, and I do not think that it is necessary to discuss homicides in that connection.

Mr. CLARK, of Florida. Please permit me to just say this: Concerning my people and this question, of course we would prefer that a penalty would be attached to any bill recommended by this committee, a penalty for the violation of the law—that is, for persons engaging in this business who have not paid the special tax; but the State of Florida is perfectly willing to accept at the hands of this Congress legislation withdrawing that special tax, and then the State of Florida can take care of it. The fact is that the ignorant men there, a great many whites as well as negroes, engage in this business; saloon men will furnish them the money to pay this special tax and then they go out around the turpentine camps "bootlegging" with it, and they believe they are protected by this special tax which they have in their pockets from the Federal Government. If you will withdraw that from them you will protect us.

Mr. SULLIVAN. My time is running on, and I mean to submit to all reasonable interruptions, but I would like to go ahead with my argument. I still assert that the gentlemen have substantially admitted that their local governments have failed to enforce the laws intended to suppress the liquor traffic.

A BYSTANDER. I should think you would be fair enough to state why it was they failed.

Mr. SULLIVAN. If the gentleman will have a little patience. They seem to be better able to anticipate what I am going to say than I am.

To test the accuracy of that position, let me suppose this case: Suppose that the United States after the passage of this law should withdraw from a prohibitory State all of the revenue officers of that State who are engaged now in the issuance of tax receipts for liquor. Then the State, under that condition of affairs, would not receive the benefit of the activity of Federal officials in punishing the violation of Federal laws. In that case the States would be thrown back upon their own resources, and I take it, if what the gentlemen have stated this morning is true, that the States would then fail to enforce the liquor laws just as they fail now. In other words, these gentlemen all contend that the State officials are not equally potent with the

Federal officials in inspiring terror in the criminal who sells liquor illegally.

The gentleman from Missouri, with his long experience as district attorney, has stated that the citizen is more afraid of the United States officials than of local officials. Another gentleman who addressed this committee, Mr. Clark, of Florida, also with long experience as a prosecuting attorney, has stated that in a trial of a liquor dealer in the locality in which the crime was committed the jury, drawn from the vicinity, would have men on it who would be inspired by the liquor they had bought, and which had been sold illegally, and they would succeed in having the man acquitted, although the verdict would be against both the law and the facts; and he stated also, which proves the proposition completely, that if the venue were changed and that same man were tried before a jury of citizens who had not imbibed that liquor, illegally bought and illegally sold, a conviction would result.

I find that Mississippi has made this declaration, and that Arkansas, Florida and Texas and West Virginia have made it. Of course, Maine has always made that declaration. Maryland comes here and says that their juries are judges of the law and facts; that a man who has a tax receipt from the Federal Government has his attorney produce it in the trial, and that some of the jury are misled into the belief that it is a license, and therefore, generally, there is a miscarriage of justice in such cases. Well, if these gentlemen are willing to come here and indict their own citizens before their Representatives in Congress I have no complaint to make; but I take it that it is not the proper business of Federal officials to assist in the execution of State laws.

Now, Mr. Chairman, I do not care much, in fact, I do not care anything about this bill, which would require the certification of a record. I do not think that is unfair in itself, and I do not care anything about this bill which would prohibit the issuance of tax receipts, although there is a serious question of revenue involved in that, which I will now point out. As a general proposition the Federal Government ought not by its law or its practices to interfere with the proper exercise of the police powers of the States. I take it no one will disagree with that proposition, whether he be for or against this bill. I take it also that no one will seriously dispute that the Federal Government is under the necessity for raising revenue. Men may differ as to whether taxation of liquor and tobacco is a proper means of raising revenue, but no one can dispute the right of the Federal Government to raise revenue by taxing both liquor and tobacco. Suppose you pass the bills asked for this morning. The public sentiment of a State may grow so that in ten years its citizens may come to this Congress and clamor as loudly for the prohibition of the issuance of tax receipts upon tobacco as they now protest against the issuance of tax receipts for liquor.

Mr. HILL. And cigarettes.

Mr. SULLIVAN. And cigarettes. There is the same reason of public policy, which is the foundation of the police powers of the States, for both are unquestionably injurious in their effects upon the citizens who compose those States; the only difference is a difference of degree. But if a State, in the exercise of its police power, forbids the sale of tobacco in any form to its citizens, and a seller of tobacco should question the constitutionality of that act, no one here would say that the Supreme Court of the United States would say that the State had

not made a valid exercise of its police power in suppressing within its own borders the sale of tobacco.

That brings to your attention the revenue question involved in this bill. I will go a step further. There is poison in coffee and in tea. Suppose the United States Government in its desire to raise the revenue which, we will say, the Dingley tariff might fail to do at some future time, should impose an internal-revenue tax upon coffee and tea. Any number of chemists can be brought forward who will testify that there is poison in coffee and in tea and that both are injurious in their effects upon the human system. If that be true and be established in a court, then a State which passes an act forbidding the sale of coffee and tea within its borders passes that act under the exercise of its police powers, and it is certain that the act would be sustained by the Supreme Court of the United States. Then if the sentiment of that State should be raised to the point of protesting against the sale of coffee and tea to the extent that they would come here and ask you to refuse to issue tax receipts upon coffee and tea you would have to give them the same attention that you give to-day to the proponents of this bill. I am merely using these illustrations to show to what this legislation may lead, and I do not think these are fanciful or exaggerated propositions.

Mr. UNDERWOOD. There are several bills here. I would like to ask you in respect to one phase. Some of these bills are to protect the State against this. They claim that the Federal Government has in its hands evidence against an unlawful act, that crimes have been committed and the Federal Government refuses to deliver the evidence to the court. Ought it not be required to deliver any evidence it has of the commission of a crime in the State—ought it not be made to give it to the State courts?

Mr. SULLIVAN. I think that is a fair question and men may differ about it. Personally, I would not object to requiring them to produce a certificate of the record, but I think there are objections to it which an officer of the Government might reasonably raise.

Mr. UNDERWOOD. I would like to hear your views on that.

Mr. SULLIVAN. The Federal Government exercises certain powers through its duly appointed officers. It is an axiom that the exercise of a power is freer when it is not restricted than when it is restricted, and if the exercise of the powers of the officers of the Federal Government are not restricted by exactions of the State they will perform their duties more freely and with less friction than if the State officers are constantly interfering.

To illustrate: If this law passes, requiring the certification of copies of records, it would impose an additional duty upon an officer who is employed by the Federal Government to keep a record. He would make a certificate of that record for the convenience of a State officer who seeks to punish an act that is an offense by the laws of the State, and only by the laws of the State; it would increase the duties of Federal officers. Once you establish that precedent it may be carried to great lengths, and I think it would be a proper question for the Secretary of the Treasury to consider—and I think he ought to be consulted, and a proper question for a committee of this House to consider—how far we should go in multiplying the duties of Federal officers in giving assistance to State officers.

Mr. UNDERWOOD. Do you not think that, notwithstanding the incon-

venience, the necessity to prevent crime in the State makes it the duty of the Federal Government that it owes to the State governments to furnish them with all the evidence that they have in their possession in the matter of crimes being committed against State laws?

Mr. SULLIVAN. I do not find any provision in the Constitution which authorizes the Federal Government to interfere with the States, except to suppress insurrection, to repel invasion, and to maintain a republican form of government.

Mr. WILLIAMS. On that point that Mr. Underwood asks, if you will allow me. A man sues another for libel. He charges that the libel was committed in a written communication to the Post-Office Department. Let us say it is in a State court. The State court certifies the fact that there is a suit and that testimony is submitted, and then this Department up here makes a copy of the document referred to, certifies it is a true copy, and sends it to the State court. Now, then, if that be not a restriction upon the power of the Federal officer, as the gentleman has described the other thing to be, what is the difference between allowing—making it a duty to copy that document and send it to be used in a State court prosecuting this man for libel—and copying another document in the internal-revenue office of the Treasury Department and sending it to the State court to be used as evidence in that prosecution?

Mr. SULLIVAN. There would be no difference in the effect of the two.

Mr. WILLIAMS. Why is this true, that the one is allowed and the other is not? Why is it true that every man in this country, even the President of the United States, can be summoned into a State court, except the Internal Revenue Commissioner?

Mr. SULLIVAN. I don't know why one is true and the other is not, and I think I can answer that question without affecting my argument in the slightest degree.

Mr. BOUTELL. But the other would not be true if the Postmaster-General should issue an order in the one case similar to the order prevailing in the Treasury Department.

Mr. SULLIVAN. Precisely. In other words, we are helped to a decision of the question by the orders of the Department itself. The head of a Department has deemed it wise in the one case to permit his clerks to make a statement; in the other case he has deemed it unwise to do so. Whether or not he is correct in his view is a question that I am not prepared to answer; he is better prepared to answer that question, perhaps better than any member of this committee.

Mr. WILLIAMS. The point I was asking is this: Does it not seem peculiar that the only criminal protected by the refusal of the Federal Government to furnish documentary evidence when this case is pending is an illicit liquor seller?

Mr. DALZELL. That is not the fact, because the same regulations apply very largely to the other Departments.

Mr. WILLIAMS. I beg your pardon; there is not another Department that orders its officers not to respond when a State court in the prosecution of a criminal desires evidence that a Government officer has.

Mr. SULLIVAN. I say the regulations of the Treasury Department are not confined simply to the matter of liquor sellers. They apply to all the records in the Treasury Department.

Mr. DALZELL. And certainly that is so in the State Department.

Mr. SULLIVAN. I was about to make that illustration; that if some litigant were tremendously interested in getting a copy of a paper on file in the State Department, the Secretary of State might reasonably say that there was a sound governmental reason which would require him to refuse publicity, and I take it that it is that same rule of public policy which has caused the Secretary of the Treasury to issue this order, and which has caused the Postmaster-General to issue the order which Mr. Williams has suggested. That is to say, the Postmaster-General has deemed that it does not injure the proper discharge of his work to allow it in the one case, just as, in the other case, the Secretary of the Treasury deemed it would interfere with his work if he allowed it.

Mr. McCLEARY. Congress frequently passes a resolution calling on a Department for certain information, "if not inconsistent with public policy."

Mr. SULLIVAN. Yes.

(At this point, 1 o'clock, the committee took a recess until 2 o'clock p. m., Mr. Sullivan continuing his argument at the conclusion of the recess, as follows:)

Mr. SULLIVAN (continuing). Mr. Chairman and gentlemen, at the close of the hearing this morning I was discussing that rule of public policy which gave discretion to the officers of the several Departments of this Government to yield or disclose information or facts which they had received in their capacity as officers of the Government, and I believe I said, in reply to the gentleman from Mississippi [Mr. Williams], that if the Government in one instance chose to permit the disclosure of information, that would not of itself furnish a precedent which ought to require another Department of the Government to furnish information which it had received; that there might be, if the facts were inquired into, a substantial and valid reason for the disclosure of matters which had been sent to the Post-Office Department which would not make necessary a disclosure of facts within the knowledge of the Internal Revenue Department.

The gentleman from Minnesota suggested that this Congress, as all Congresses do, frequently passes resolutions calling upon officers of the Administration, sometimes Cabinet officers, to furnish to Congress information relating to subjects that are then under inquiry by Congress, and that usually they couple with that resolution asking for information the condition "if it be not contrary to public policy." That very form of resolution indicates the well recognized ground upon which the Departments may in some instances give information and in other instances refuse to give it. The idea, I think, was first suggested—my memory was refreshed in the time for luncheon—by the attitude of the Attorney-General of the United States in the case of *Marberry and Madison*,^a where he said to the United States Supreme Court that he doubted whether it was proper for him to give out the facts—

Mr. BOWIE. But that was where there was a state secret involved. Is there any such thing as a state secret involved in the suppression of evidence of crime?

Mr. SULLIVAN. The case I was citing is not a precedent in favor of the point I am making, because in that case the court held that what

^a*Marberry v. Madison*, 1 Cranch (U. S.), 137.

the court desired was facts, and that in the opinion of the court the Attorney-General should disclose them, and he did; but the court also approved the general position of the Attorney-General that there might be facts in his possession that had come to him as an official which he might not be required and which no court would require him to disclose.

Mr. BOWIE. Let me ask you a question right on that point. Is it not true that that form of deference, or respect, as you might call it, of Congressional requests to the Executive Departments, is based upon the theory that certain information might be confidential in its nature and in the form of a state secret, which might not be advisable to quote, and that that could not apply to a case of this sort where it is simply the breaking of a law, which would be condemned by all parties?

Mr. SULLIVAN. I agree with the gentleman that the reason he gives for that form of resolution by the House is the correct reason, that they put that in recognizing that there might be reasons which would forbid the giving out of facts in possession of the Department; that is to say, that the Department is engaged in some particular business or inquiry in which the premature publication of the facts might defeat the very object for which the inquiry had been instituted. I don't know whether the gentleman's inference is exactly sound in this case.

Mr. UNDERWOOD. Is not that the real question in the case, as to whether it is the proper policy of the Government to suppress this evidence or give it to the public; is not that the real question before the committee?

Mr. SULLIVAN. I think there is a larger question than that. I think if you carry this demand to its logical conclusion you will cut off from the Government one of its principal sources of revenue, and this committee is a committee that is bound to take into consideration the present sources of revenue, and the advisability of extending or curtailing them.

I can see that under the present statute in States which make the mere fact of the payment of a tax to the United States Government *prima facie* evidence of the violation of the State law intended to suppress the liquor traffic, if the Government furnished a record of persons who paid the State tax in many cases men would be convicted without there being offered in court a scintilla of evidence—and I mean exactly what I say, and in making that statement I am distinguishing that which is proper evidence; that is to say, those inferences which are properly deducible from facts, and so-called evidence, which is evidence only because it is made so by statute. Now, the mere fact, for instance, that a man pays a tax is not of itself evidence that he has sold liquor or even intends to sell it.

Mr. UNDERWOOD. But if the State law provides that that shall be *prima facie* evidence of that fact, a man who does not intend to sell liquor will not pay the tax.

Mr. SULLIVAN. I should think no reasonable person would unless he intended to do it, and I suppose the State law is passed upon the presumption that no man would take out that tax receipt unless he intended to sell liquor; but the point I am trying to bring out is this, that in the actual trial the evidence of the payment of the tax is put in and it goes to the jury; the man chooses not to put in any evidence himself; the State law makes the production of the State tax, or a certified copy of it, *prima facie* evidence of his guilt; the State rests

its case there, and under the law that man should be convicted. Now, there is not in that case I have put a single particle of proof that the man sold one drop of liquor; in other words, he is convicted upon what the statute has declared to be evidence.

Mr. DALZELL. If it is open for a State to pass a law saying that the payment of a tax to the United States Government shall be *prima facie* evidence of that man's guilt, is it not equally competent for that State legislature to go a step further and say that the existence of his name upon a schedule of those who have paid such a tax to the Government, put up in a public place, shall be conclusive evidence that he has paid that tax? Why can not the State make that a matter of evidence just as well as to say that the payment of the tax is *prima facie* evidence of his guilt?

Mr. SULLIVAN. That is, the mere hanging up of the schedule of those that have paid the tax as evidence that those parties have paid it?

Mr. DALZELL. Yes.

Mr. SULLIVAN. Well, I think the State could do that.

Mr. DALZELL. Certainly.

Mr. HUMPHREYS. You understand that the law does now require the several collectors to make an alphabetical list of the parties who have paid the tax and hang it up?

Mr. SULLIVAN. I understand that is the law and practice; yes.

Mr. DALZELL. That is the law now; yes.

Mr. SULLIVAN. So that there is no difficulty on the part of the local prosecuting attorney in obtaining the information he seeks, namely, as to what persons have paid the tax; that information is brought to him by the published list of the collector's office. What they desire is something more than the information; they want the payment of the tax to be *prima facie* evidence of his guilt; they want the payment of the tax to be *prima facie* evidence that he has committed a criminal offense.

Mr. HUMPHREYS. There is no secret, Government secret or any other kind of secret, that the officer is trying to protect when he fails to testify in the State court, because the list has been made known and published to the world.

Mr. SULLIVAN. That is true, but there still may be a reason for the Department taking the position it does—namely, a revenue reason.

Mr. DALZELL. Section 3240 of the Revised Statutes is as follows:

Each collector of internal revenue shall, under regulations of the Commissioner of Internal Revenue, place and keep conspicuously in his office, for public inspection, an alphabetical list of the names of all persons who shall have paid special taxes within his district, and shall state thereon the time, place, and business for which such special taxes have been paid.

Now, is it not perfectly competent for the legislature to pass a law saying that the presence on this alphabetical list of the name of a person shall be conclusive evidence that he has paid the tax?

Mr. SULLIVAN. I think it is, and I think the use by the State legislature of the term "*prima facie*" is in reality an abuse of terms. They might just as well have said "*conclusive evidence*." Take a man accused of the illegal selling of liquor, put him in court, produce the tax receipt and call it *prima facie* evidence of his guilt; the State rests there. Now, the burden is on the defendant to show that he was not engaged in the illegal selling of liquor. You can see how difficult that is to show—how hard it is to prove a negative. I invite some

lawyer to tell me how some man that is actually in court charged with selling liquor illegally can overcome the *prima facie* case the State makes out against him by the production of that tax receipt.

Mr. UNDERWOOD. Let him take the stand and say that he is not doing it.

Mr. BOWIE. Could you conceive of any case where it was not conclusive if a man had paid the license to the Federal Government?

Mr. SULLIVAN. Quite easily, yes; and I am not gifted with a particularly lively imagination, either.

Mr. BOWIE. Then what is to prevent the man from proving it? If it is a fact peculiarly within his own knowledge, and the presumption is certainly that he is guilty—you will admit that—and if he is not guilty the fact is is peculiarly within his own knowledge, and the law says that it rests upon him to show it.

Mr. SULLIVAN. But I will ask the gentleman, how could a man show that?

Mr. BOWIE. He could swear to it himself; he could take the witness stand; he could testify to the reason why he got the tax receipt and what use he intended to make of it.

Mr. SULLIVAN. The gentleman has just said that the mere fact of the payment of the tax affords the presumption that the man is guilty, and yet he says that by the mere taking of the stand and swearing he can exculpate himself.

Mr. BOWIE. Unquestionably a man frequently puts himself in an attitude where the burden of proof of his guilt shifts from the State to himself. If one man shoots another and kills him, and then claims self-defense, of course the burden is on him, then, to prove self-defense.

Mr. SULLIVAN. The gentleman is a good lawyer. I will ask him if in a case where, under a statute, the production of a tax receipt is *prima facie* evidence of illegal liquor selling, the Government produces that tax receipt, and rests, and the defendant takes the stand and says he didn't engage in the selling of liquor illegally, and the case rests there, what his opinion is of the outcome of such a case.

Mr. BOWIE. The question would entirely depend upon the belief of the jury as to whether or not he swore to the truth. They would be moved by his demeanor on the stand, and all the circumstances, and whether or not he gave a reasonable explanation of his possession of it. It is like any other case; the jury weighs the testimony and they have the facts before them.

Mr. SULLIVAN. But I ask the gentleman as a practical, practicing attorney, leaving out the theory of what the jury ought to do, what he thinks the practical issue of such a state of affairs would be, based on his own experience as a trial lawyer.

Mr. BOWIE. It would depend altogether on the man and his manner. I think in nine cases out of ten he would be guilty, and I would find him so; but there might be a reasonable explanation offered for it, if there is any under the sun.

Mr. SULLIVAN. I think the inability of the people of these States that are represented here to enforce the laws for the suppression of the liquor traffic has been abundantly developed by the proponents of these bills. The fact which the gentleman from Missouri (Mr. Clark) brings out, that in some States the local district attorneys' efforts are reinforced by a State deputy attorney especially created by statute;

whose business it is to go through the State and prosecute for violations of the liquor law, is further evidence of the great difficulty of suppressing the liquor traffic, and I think it is one of the unfortunate results of prohibitory legislation that the liquor men have become active in politics in those places where the suppression of liquor is attempted by law.

It was confidently predicted, I assert, in every case where a prohibitory law was argued for in these United States, that the passage of such a law would purify politics by taking the liquor dealer out of politics, and I assert quite as confidently that in every case where it has been tried the exact reverse of that prediction has been the fact; that the liquor dealer has become active in politics because he hopes by exercising political power to bring to his aid those who must aid him in order to enable him to make a living in violation of law.

Some statistics were read here this morning showing the number of tax receipts issued in prohibitory areas and in licensed districts, and it was shown that in licensed districts the number of tax receipts issued exceeded the total number of places licensed by the State authorities. I am certain that those statistics in themselves lead irresistibly to the conclusion that a great number of the places where tax receipts have been taken out are doing business in violation of the law, and I submit this suggestion to the committee for its consideration: That it find out in particular licensed places whether or not licenses, not as retail liquor dealers but as other forms of licenses, are required to be taken out for the sale of liquor for medicinal purposes by druggists and for the sale of liquor for mechanical purposes, such as in the case of dealers in paints and oils.

Mr. DALZELL. I have been told that the same form of receipts are given in both cases.

Mr. SULLIVAN. However, if it is ascertained that in licensed communities men who have paid taxes to the Federal Government are engaged illegally in selling liquor, then I believe it is not because of any defects in the license law itself, but because the license law does not go far enough. During the hours in which liquor may be sold legally in the city I believe there is very little liquor sold unlawfully; I believe that the "kitchen barrooms" and the "blind tiger" can not live in competition in a city with lawfully licensed liquor dealers, and that it is only when the lawfully licensed liquor dealer closes his place of business that the "blind tiger" and "kitchen barroom" commence operation; that it is after 11 or 12 o'clock, whatever the legal closing hour may be; that it is upon Sunday, when the selling of liquor is prohibited, and upon holidays that the "blind tiger" and the "kitchen barroom" thrive.

Now, what is the reason, Mr. Chairman—to take up, perhaps, a few minutes more of the committee's time—for the failure of prohibitory laws to prohibit? I think any fair minded man would concede that they have failed. Why have they failed? The method of securing prohibition is by popular vote, usually. A bare majority of one in a voting population of 10,000 would spell prohibition so far as the State was concerned. The minority of that community does not surrender its views; that minority believes that liquor ought to be sold, and that it is better for the whole community that it should be sold. Not only that, but there is always a portion of the majority who vote prohibition who do not

practice all that prohibition enjoins, and who secretly obtain liquor for themselves, and who have really little sympathy for the attempt to enforce the laws which they themselves helped to put upon the statute books.

When these gentlemen come before your committee and tell you that they can not enforce the liquor laws by the exercise of powers of the State government without receiving aid from the Federal Government, through its officers, it must be because the officials whom they elect are either dishonest or inefficient. It seems to me that the remedy lies in each community. It seems to me that the community, when it has come to the proper standard of sentiment with respect to the enforcement of law, can enforce its laws, and that whenever laws are not enforced it is because a majority of the people do not want them enforced.

In conclusion I want to say a few words about the Williams bill. I think that the remarks that I have addressed to the committee generally upon the subject of prohibition and local option will apply also to this bill.

Mr. CLARK, of Missouri. Before you begin that I would like to ask you one question. If the argument you made about the enforcement of law depending upon public opinion does not extend to all criminal statutes?

Mr. SULLIVAN. I think it does.

Mr. CLARK. That is if the sentiment is overwhelmingly one way in a certain bailiwick, you can enforce law, and if it is by a bare majority it is extremely difficult to do it, and that is the reason it has broken down so often?

Mr. SULLIVAN. Yes; I think that is the fact, and I think that is the view of all those who have examined statistics with the view of eliciting information rather than with the view of supporting some pre conceived theory.

I believe that if this bill should be passed, in the first place, a very large and profitable business which is carried on in nearly all of the large cities of this country would suffer diminution, and I suppose that is a matter which is entitled to receive some consideration from the committee.

The brewers and wholesale liquor dealers in licensed cities undoubtedly send large quantities into prohibition States and no-license cities and towns, and undoubtedly send much of that liquor C. O. D., and I believe there is a recent decision of the Supreme Court of the United States which holds that where liquor is sent C. O. D. from one State to the other, that the sale in the State of destination is not illegal, and I suppose that this bill really is asked because of that decision of the Supreme Court; in other words, in order to take away from such sales the protection which their present interstate character gives them. I believe this does more than any of the bills which have been under consideration. All of those seem to me to affect only the citizens within a State, but certainly this bill goes beyond that and affects citizens outside of the State from which the protest comes. It seems to me to interfere seriously with the right of a man in one State where liquor may be sold legally to restrict a certain part of his business.

I, myself, believe that a man in a prohibition State has a right to buy liquor for his own use, and I do not think anyone in a prohibition State has attempted to deny that right. Now, however, if he chooses

to order his liquor and have it sent to him C. O. D., that fact renders that liquor liable to seizure and the carrier who brings it to him liable for conviction for illegally selling liquor under the law of a State. That law, it seems to me, if enforced, would seriously restrict the rights of citizens in a State to import into that State liquor for their own use. I do not think that it would suspend entirely the liquor traffic, because a citizen that could not obtain his liquor, we will say, in the State of Mississippi from the State of Alabama C. O. D. could, if he were known to the liquor dealer in Alabama well enough to have a credit established, obtain his liquor on credit, and in that case the State officials in Mississippi could not interfere with that interstate-commerce transaction.

Further, if the citizen of Mississippi sent a letter containing an order and the money for the payment for the liquor through the mails into the State of Alabama, and the order should be accepted in the State of Alabama and the liquor subsequently delivered in the State of Mississippi, that transaction would be outside of the scope of this bill; it would be perfectly legal. The citizen of Mississippi could lawfully obtain his liquor in that way. There are two ways which I have indicated that the citizen of Mississippi would still have to obtain his liquor. The third way is struck by this bill, namely, obtaining it C. O. D., and even from the standpoint of a Mississippi citizen it would curtail a right which he ought to have.

Mr. WILLIAMS. The local-option law of the State of Mississippi forbids the sale of liquor within county A in Mississippi. If that liquor dealer came there and sold it to that man and collected the money, he would be convicted and sent to jail?

Mr. SULLIVAN. Yes.

Mr. WILLIAMS. There is no dispute about that proposition?

Mr. SULLIVAN. No.

Mr. WILLIAMS. Now, the State has passed a statute against anybody acting as agent for the seller—

Mr. SULLIVAN. Within the State?

Mr. WILLIAMS. Yes. The express company brings the liquor to this man and before he can get it he has to pay not only the transportation charge to the express company, but the price of the liquor. The courts of Mississippi have taken the position that that is a sale in the State of Mississippi. I would like to ask the gentleman from Massachusetts if the Supreme Court of the United States had not passed upon this case what would have been his opinion as to whether that was a sale in Mississippi or a sale in Illinois—if Illinois was the State from which the whisky was shipped.

Mr. SULLIVAN. In my opinion if it had not been for the decision of the Supreme Court of the United States such a sale within the State of Mississippi would have been illegal, the sale of liquor without license being prohibited in Mississippi. The payment contingent upon delivery would have been necessary in order to complete the sale, and in law the sale would have been held to have taken place in Mississippi, and would have been illegal. That is the law in such cases in Massachusetts, in all events.

Mr. WILLIAMS. Is it or is it not the opinion of the gentleman from Massachusetts that the express company in attempting to collect acted as the agent of the seller?

Mr. SULLIVAN. I think that is a question of fact.

Mr. WILLIAMS. Suppose the only fact you know is that he undertook to collect?

Mr. SULLIVAN. You mean the price of the liquor as well as the transportation charge?

Mr. WILLIAMS. Yes.

Mr. SULLIVAN. That is, suppose in a case that the only facts presented were that the transportation company collected from the consignee the transportation charge and the price of the liquor?

Mr. WILLIAMS. Yes; or suppose they did not collect—suppose they brought it for that purpose—did they not enter into a contract with the liquor dealer in Illinois to collect before delivery, and in entering into that contract did they not act as agent of the seller?

Mr. SULLIVAN. I think they would be held in law to be the agents of the seller on that statement of facts. If it were held, on the contrary, that they were the agent of the purchaser in the delivery of the liquor I think that the sale would not have taken place in the State of Mississippi.

Mr. WILLIAMS. Did they or did they not in acting as agent of the seller become a party to the sale?

Mr. SULLIVAN. Now you are assuming a state of fact prior to the Supreme Court decisions?

Mr. WILLIAMS. I am assuming that state of facts, but I am leaving out the law question as to what bearing the Supreme Court decision has upon this question.

Mr. SULLIVAN. Yes; I would say they were a party to it.

Mr. WILLIAMS. Taking the general principle outside now, does not an agent in an unlawful transaction, or a lawful transaction—it makes no difference which—become a party to the transaction?

Mr. SULLIVAN. Necessarily so, or he would not be an agent.

Mr. WILLIAMS. Is not that a matter of plain common sense?

Mr. SULLIVAN. It seems irresistible; I would not contend to the contrary at all. I do not know what the gentleman seeks to establish by his series of questions, other than the fact that the decision of the Supreme Court of the United States may possibly have facilitated the illegal sale of liquor in Mississippi to an extent that had not been practiced prior to that decision. Is that what he seeks to establish?

Mr. WILLIAMS. That is part of it.

Mr. SULLIVAN. I assumed that was so, and perhaps that is one of the reasons of this bill.

Mr. WILLIAMS. And would the gentleman like me to tell him what else I was trying to get at?

Mr. SULLIVAN. Yes.

Mr. WILLIAMS. It was this: Not only has it facilitated the sale of liquor there, but it has put things in such an attitude that this facilitation of the sale of liquor in the State of Mississippi finds itself protected by the interstate-commerce clause of the Constitution, and the Supreme Court having decided that the State of Mississippi could not remove this facilitation by any act of its own; the only power in the world that can remedy the evil is the Congress of the United States.

Mr. SULLIVAN. Why does not the gentleman go further and, if he believes that the object sought to be accomplished by this bill is a proper object, why does he not seek to prohibit the carriage of liquor from one State to another State, in which latter State the sale of liquor is prohibited upon any condition, instead of confining his bill to the

sales of liquor C. O. D. Why does he not, for example, attempt to reach the other two classes of cases which I have mentioned, namely, first, where the citizen of Mississippi who is thirsty—as most men are in warm climates, I presume—is known well enough to the liquor dealer in the other State to have established a credit, or where he sends his order accompanied by the price of the liquor to the liquor dealer outside of the State? If the object sought is to prevent the use of liquor in the State of Mississippi, it seems to me the gentleman's bill should go further and be broad enough to include those two sales.

Mr. WILLIAMS. The gentleman asks me the question why I did not go further, and I will answer it briefly. I thought that in the court of ethics and fact, whether in the court of law as construed by the Supreme Court or not, where a man had had his liquor paid for, or where he had shipped it on the credit of the man to Alabama, that it was a sale in the State where the goods had been shipped and not a sale in the State of delivery.

Mr. SULLIVAN. The gentleman was right in assuming that to be the law, and he is right now in assuming that the law is otherwise in the case of C. O. D. shipments, since the Supreme Court has spoken.

Mr. WILLIAMS. But the law can not change ethics, and can not change facts, can it?

Mr. SULLIVAN. Perhaps not; but I think sometimes the community tries to lift itself up to the level of the law; but wherever a community has tried to lift itself to the level of a prohibitory law it has signally failed.

Mr. HILL. If it has the power to prohibit the C. O. D. transaction it has the power to prohibit the other. The question is whether they have the power to do it at all or not.

Mr. SULLIVAN. I was going to say that there was no question, I think—

Mr. WILLIAMS. If the gentleman will permit me, it is not a question of power, it is a question of discretion with Congress as to whether it should exercise the power. It might find it discreet and wise in one case to exercise it. There is no doubt about it, that it could prohibit the shipping of liquor from one State to another, but it is not fool enough to undertake it. The question before us is whether it is discreet, and wise, and proper, to pass the bill.

Mr. SULLIVAN. Yes; I think the real question is whether Congress shall relinquish part of the power it has to deal with interstate commerce, that part of it which deals with the sales of liquor C. O. D. In other words, it seeks to put one commodity out of the vast number of commodities that are the subject of commerce upon a different plane, under the interstate commerce law than other commodities, and it seeks to select also one particular class of sales out of the variety of sales as the subject of the exercise of its power.

I think that either the transportation of liquor from one State to another should be prohibited entirely or else Congress should not act upon the question at all. I do not see any reason why Congress should declare a sale C. O. D. to be illegal, while permitting sales upon purchase by the consignee in the State of sale and sales upon credit to stand and have validity before the courts. If the object sought is to promote sobriety and temperance in that particular district, I feel quite certain that this bill will fail to accomplish that object, for if it cuts off this means of obtaining liquor the other two means remain,

and I do not see why one or both of the others may not be availed of by the thirsty in any particular State.

But I think, Mr. Chairman, that we ought not to confine our attention entirely to a consideration of the rights and privileges of citizens in the prohibitory State; I think some attention is due to the rights of the citizens in the State which permits the sale of liquor. Surely the Constitution was intended to protect such citizens as well as those to whom the liquor may be sold; surely the first class of citizens have some rights which the law in their own State gives them, and by an act such as you propose to pass here the right of those citizens under the law of their own State is cut off by the law of another State and made dependent on the law of another State.

Mr. BOWIE. Does the gentleman mean to say that the State of Massachusetts can license a man to sell liquor in the State of Maine? Is that the point the gentleman is trying to make?

Mr. SULLIVAN. I will ask the gentleman if he thinks himself that is the point I am trying to make?

Mr. BOWIE. I rather thought it was, to be candid. I understood you to say that the State where it is licensed gives the citizen a right to do business with a man in a State where the selling of liquor is prohibited.

Mr. SULLIVAN. I have not taken that position, and I abandon the defense of that position to the gentleman if he wishes to make it; but I do say that under our Constitution and system of laws it is intended that there should be the utmost freedom of commerce within the States and Territories of this Union, and that the power given to Congress to deal with the subject of interstate commerce and foreign commerce was given in order to secure a uniform system. Each gentleman here is familiar with the lack of uniformity of the system which existed prior to the adoption of the Constitution, and also with the fact that if it had not been felt to be too grievous a burden for the citizens of the several States to bear any longer in all probability we would not have had the constitutional convention as early as we did. That was one of the main grievances of the original States.

Now, having established a uniform system, we are constantly asked by gentlemen from different parts of this Union to take away from our system that uniformity which the framers of the Constitution intended to accomplish, and we are asked to throw upon shippers in the several States of the Union and upon merchants the burden of examining the local statutes of the several States of this country in order to ascertain whether they may lawfully deal with the citizens of those States. I think that is something which the committee ought to take into consideration in discussing this bill.

Now, I have heard, though it has not been stated before the committee yet, that one of the reasons for asking the passage of this bill is because the transportation company is not as a matter of fact actually engaged as a carrier, but is actually engaged in the business of selling liquor unlawfully. I am told this practice has grown up; that a liquor dealer in a State sends packages of liquor by a carrier into a no-license city of another State; that the packages are addressed to A, B, C, D, E, and so on.

I do not mean this by way of illustration, but that they are addressed literally to A, B, C, D, and E; that those letters are placed on the tags, and no more definite designation is made of the consignees than that.

And I believe in some cases they have been addressed to No. 1, No. 2, No. 3, No. 4, and so on. We are told that in reality that system is a system of illegal liquor selling, and that the carrier is the agent for the liquor dealer in the other State for the sale of liquor illegally within the proscribed territory. Now, if that be so, I see no reason why in that proscribed territory the man who wants liquor for his own consumption, and not for the purpose of reselling in violation of the local statutes, should not be permitted to send his order into another State, bona fide, have the liquor delivered to him, addressed to him in his proper name, with his street and number upon the tag, and pay for it when he receives it. That seems to me to be a perfectly legitimate transaction which no one except an extreme prohibitionist would question.

Now, then, in order to get at the illegal system which I have suggested exists, you attempt to strike down the right of the individual who wants to procure liquor for his own use within that State. I ask in that connection if it be necessary to invoke the ponderous machinery of Congress at the sacrifice of depriving our system of some of the uniformity which we have obtained to reach that class of offenders, and I would ask of the gentleman from Mississippi whether or not in his opinion the Mississippi legislature could not deal with that phase of the situation without impairing the rights of the honest citizen who buys his liquor in good faith C. O. D.?

MR. WILLIAMS. I answer it by saying that the Mississippi legislature has a law upon the statute books and has found that it is absolutely unable to enforce it because of this decision of the Supreme Court.

MR. SULLIVAN. I will ask the gentleman why it is found impossible to enforce it?

MR. WILLIAMS. Because of this decision of the Supreme Court. It is an interstate-commerce transaction, and Mississippi can not deal with interstate commerce. I contend it is not an interstate-commerce matter any more than in the case of liquor being shipped to A and B, and the Mississippi legislature declared when liquor was shipped to A or B it was a fraudulent transaction. The Supreme Court, by a forced sort of implication, would still cover that transaction.

MR. SULLIVAN. I respectfully disagree with that proposition of law. I contend that it is an illegal transaction from its inception to its close.

MR. WILLIAMS. Suppose it is illegal. Is it an illegal Federal or an illegal State transaction?

MR. SULLIVAN. It is an illegal State transaction, and upon a presentation of the facts I have stated to a jury and a competent court a conviction ought to be secured.

MR. WILLIAMS. The conviction would be secured but it would be set aside.

MR. SULLIVAN. I believe the Supreme Court would hold that that was not protected by any alleged interstate commerce transaction—that the Supreme Court would look beyond the forms, see the transaction in its substance, that it would declare that it was a subterfuge, and from the beginning intended to defeat the law of Mississippi, and that the United States court would not undertake to protect such a transaction under the guise of protecting interstate commerce.

What is the transaction? How does it differ from this? Suppose instead of sending these packages to A, B, and C, in the State of Mississippi, that the liquor dealer in the other State, we will say Alabama,

sent a number of jugs of liquor to a person in the State of Mississippi, through the express company, and that persons thereupon came to the office of that company and bought liquor, 1 gallon or 2 gallons or 3 gallons, according to the size of packages which the express company thought would be demanded by that community, and those packages remain there, we will say, for one week or two weeks or three weeks, subject simply to call upon the part of one who wished to buy. Would not that be a sale within the State of Mississippi? Does it alter the fact, then, that that same carrier when he receives it sends out and makes a delivery as quick as possible, does that make it any more an interstate-commerce transaction than if he allowed it to stay in his warehouse until somebody called for it? I believe that a Mississippi court would see that the actual transaction was a local one, a sale within the State of Mississippi in violation of Mississippi laws, and I believe that the court of the United States would uphold that conviction. Now, if the gentleman can tell me some reason why it would not, I would be glad to have him state it.

MR. CLARK, of Missouri. I would like to ask you or somebody else, and solely for information, if you know what is the reason they send all this stuff C. O. D., why don't the seller when he sends for his whisky send a draft along to pay for it?

MR. SULLIVAN. I suggested that, Mr. Clark, that even if this bill passes that privilege still remains in the gentleman from Mississippi, that he can send it on and that when the order is accepted in the license State, the money paid, it is delivered to the carrier, and that is a perfectly legal transaction, just the same as if it was sold on credit.

MR. WILLIAMS. I would answer the question of the gentleman from Missouri, if the gentleman from Massachusetts will permit me.

MR. SULLIVAN. Certainly.

MR. WILLIAMS. The reason why they have it sent C. O. D. is because the fellow doesn't want to drink it, but wants to sell it, and it is a large transaction, sent that way, and he wants it to remain in the express office, and he does not want to pay for it until the fellow who buys it from him pays him.

MR. SULLIVAN. That reveals exactly what I supposed to be the case. That is absolute confirmation of what I stated in the beginning, that what is sought here is to invoke the power of the Federal officers to do that which local officers have failed to accomplish, namely, the stopping of the illegal sale of liquor within their own confines. In the case the gentleman suggests the mere delivery by the carrier to A, we will say, would not shock the conscience of that community. It is the subsequent resale of that to Tom, Dick, and Harry by the glass full and by the pint and by the quart that shocks the conscience of that community, and it is that evil which is actually sought to be remedied by this bill.

That brings me to the precise question in the case, namely, whether the officials in the State of Mississippi can not deal with that abuse themselves, if they elect honest and competent officials. Why can not they find out the places where these liquors are sold in violation of law by the glass and by the pint and by the quart? Surely they can not hold the Federal officers of the Government responsible for this condition of affairs. If they suffer from that evil, it seems to me it is an evil that that community ought to suffer from until they rise to that degree of sentiment that they will elect honest and competent officials who will break up that system.

STATEMENT OF MR. ROBERT CRAIN, GENERAL COUNSEL FOR THE UNITED STATES BREWERS' ASSOCIATION, BALTIMORE, MD.

Mr. CRAIN. Mr. Chairman and gentlemen of the committee, I hardly know that it is necessary for me to add to what has been already said by the gentleman from Massachusetts (Mr. Sullivan). The several bills which have been under discussion to-day, it must be admitted, are all attempts to get the aid of the Federal Government to execute State laws. With that general proposition I shall leave the several bills and confine my remarks especially to the one bill of Mr. Williams. I will say, however, in passing, that what is known as the Humphreys bill contains no principle which I care to go on record as opposed to.

Mr. McCLEARY. Which one of the Humphreys bills? There are two of them.

Mr. CRAIN. The one which undertakes to make the Government officials of the Internal-Revenue Department testify as to the issuing of the special-tax receipts.

And officially I speak for 95 per cent of them. The American brewer has no sympathy with the so called "blind tiger" of the South.

They respect the law—and it is conceded that they represent a worthy class of our citizenship—contributing by way of internal-revenue taxes \$50,000,000 a year to the Federal Treasury and producing a pure-food product consumed by a majority of the American people, they are deeply interested in the suppression of all character of crime.

The brewers of this country will follow our friends in the South in their effort to suppress the blind tiger. We sympathize with you and will lend every assistance which you may suggest.

In the great State of Texas the prohibition element has made great advances in the past several years by reason of an aroused public sentiment against a certain class of low dives where crime was committed daily. No one will assert that beer drinking in these dives caused drunkenness or made men insane. Nevertheless the brewers of Texas have joined hands with the law element of the community, and it is admitted have been the greatest factor in the people's efforts to suppress crime. What they have done in Texas they will do in every State in this Union.

In the Williams bill,^a as has so well been said by the gentleman from Massachusetts, we have the plain attempt to have the Congress of the United States step in and enforce the State laws which the States themselves can not enforce. That is all that the bill means. What Mr. Sullivan had to say about the States which were not prohibition, and the uniformity of the interstate-commerce clause, and the regulations under it, there certainly can not be any successful answer to.

In section 16 of the bill introduced by Mr. Williams—and this is one of the things which has caused us great concern and to which we object very much—is the following:

That all persons are prohibited from importing into the United States from any foreign country and from transporting into one State from another State any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or

other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article of an immoral nature, or any drug or medicine or any article whatever for the prevention of conception or for causing unlawful abortion, or any lottery ticket or any advertisement of any lottery, or any spirituous, malt, or vinous liquors.

Now, gentlemen, I say with great respect, speaking for my clients, that Mr. Williams, unwittingly I know, has placed us in a very unpleasant position.

Mr. WILLIAMS. Has there ever been any country in existence since the beginning of the world that did not make some one of these matters subject to police regulation?

Mr. CRAIN. I don't know of any civilized country—

Mr. WILLIAMS. Can you give the name of any one country that does not subject liquor selling to peculiar restrictions, just as everything else that comes especially under the police powers, as dangerous to public health and public morals?

Mr. CRAIN. I can say that upon all of the statute books of all the civilized countries in the world we find a provision against murder, arson, and larceny. At the same time, they are not included always with the selling of beer. The sale of beer in this country, from the time of Alexander Hamilton and Benjamin Rush down to the present day, with the truly moral element of the community and the right-thinking people, has never been considered a crime, and if its sale is not a crime there is no reason why it should be included in this bill. At the very beginning of this Government the whole theory of American politics was to foster the sale of beer, because it was considered a perfectly harmless liquid food. And with the several States where this question has been considered from time to time the statute laws, while including beer with strong drink, have not, so far as I know, ever undertaken to fix the legal status of beer in the same category with lottery tickets and vices of that character. We ask that the attempted prohibition of C. O. D. shipments of beer as provided in this bill be stricken out.

The CHAIRMAN. Mr. Williams has labored under a disadvantage in this respect, because he fires into the body of the Dingley law, which relates to importations from foreign countries and customs duties. It is rather difficult to make a very harmonious and logical connection between those two subjects.

Mr. WILLIAMS. In justice to myself I want to say that the chairman's intimation that the Dingley bill deals entirely with the tariff is absolutely incorrect. It also deals with internal-revenue subjects, as he knows.

Mr. CRAIN. We say that a simpler way of doing this, if this bill is to be enforced, is to strike out the words "malt liquors." There certainly should not be—and I say it with great respect to the distinguished gentleman from Mississippi—ought not to be any reason why the C. O. D. shipments of beer or malt liquors from one State into another State of the Union should be prohibited. If the United States Government can afford to take \$50,000,000 every year from the sale of beer and put it into its Treasury, in good faith and good morals, the United States Government ought not to say through an act of Congress that the shipment of beer from one State to another should be treated in a different manner than the shipment of sugar, tea, coffee, or any other of the food products of this country.

Mr. SHIRLEY. If the United States can take an equal sum from the distillers of the country, is there any reason why they should exclude malt liquors and include spirits or vinous liquors?

Mr. CLARK, of Missouri. I would like to ask you both a question at the same time. Don't the people who drink the whisky pay the taxes?

Mr. SHIRLEY. Certainly.

Mr. CRAIN. I think that is the rule with all other things, that the people who consume pay the taxes; but with beer the consumer's tax is infinitesimally small.

Mr. McCLEARY. But we heard yesterday from the eloquent gentleman from Texas that it was the producer who paid the taxes in certain cases.

Mr. CRAIN. Taxation is a large question, and with many men of many minds I would rather travel down the middle of the road on the general question.

The CHAIRMAN. It depends upon the point of view.

Mr. CRAIN. But, gentlemen, if this law is to pass, and if a man who lives in a nonprohibition State is to be deprived by Congress of his right to purchase and pay for, as he pleases, something that he desires to drink, where will we come to in dealing with the commerce clause in the Constitution? At every session of Congress, before the Judiciary Committee of the House and before the Judiciary Committee of the Senate, bills arise, with one single aim, all coming from our prohibition friends, seeking the aid of Congress to pass national legislation to enforce the police regulations of a few States in the Union. It has been argued, and argued with great intensity of feeling, before the Judiciary Committee of the House, that the Congress of the United States had a right to delegate to the several States of the Union the administration of the commerce clause of the Constitution in the teeth of the very plain provision of the Constitution of the United States that the commerce clause of the Constitution should always remain with Congress.

Mr. SHIRLEY. Now, will the gentleman tell the committee what his opinion is as to the validity of this law, having in mind that its operation is made to depend upon the previous action of a State law? In other words, the act prohibits interstate shipment only into those communities where a State law has made prohibition.

Mr. CRAIN. As a general proposition, I would say that the Supreme Court of the United States would take the ground that that could not be done. It certainly is an inequality in the administration of this attempted provision, as shown in this Williams bill. One of the effects of this measure would be to prevent the citizens living in a prohibition State, if they had no fixed credit at the place of purchase, to buy a case of beer.

Has Congress the right, and if it has the legal right, will Congress in its wisdom undertake to prevent a citizen of any one of the States of this Union from buying a case of beer in an orderly and legal way? That is the question involved here as it affects us, and this is exactly the way it will work out: Our enemies always say, and you will hear the statement in any discussion on the floor of the House—we hear it in the committee—always, "Let the States alone, Mr. National Government and Congress; the States will take care of themselves." Now, I say that that is the greatest pretense that has ever been circulated around the halls of Congress, because every effort that is made

here is an attempt not to get Congress to let alone the administration of the State laws, but to invoke the aid of Congress in carrying out these State laws. There were 12 bills under discussion to-day, and in every one there is but one object in view, namely, to have the National Government enforce the local State laws regarding the sale of liquor in prohibition States. Every gentleman, whether from the South or the West, says, "We can not convict a man for violation of our State laws, and therefore we come and ask Congress to help us convict." Isn't that an honest statement?

Mr. UNDERWOOD. Except as to the class of bills such as Mr. Humphreys designated.

Mr. CRAIN. There are two classes of bills here.

Mr. UNDERWOOD. Mr. Humphreys' bill, Mr. Bowie's bill, and several others provide that we may require the Government officers to give testimony.

Mr. CRAIN. That is not so far-reaching as the others. If a man in Mr. Humphreys' State of Mississippi violates the law of Mississippi, they say that they can not convict him very well unless the Federal Government puts in evidence the special tax receipt—held by the man on trial.

Mr. WILLIAMS. Suppressing the tax receipts.

Mr. UNDERWOOD. Not at all; the rules of the Treasury Department now prohibit an officer from becoming a witness. These bills of Mr. Bowie and Mr. Humphreys along that line merely say that he shall become a witness if the State wants him to.

Mr. CRAIN. I understand that. The reason that you desire the officer of the Government to become a witness and to use the Government records is because it will facilitate the State in convicting a man who violates the State law. I am not finding fault with the bill of Mr. Humphreys.

Mr. HUMPHREYS. Can you have any other reason for introducing any evidence, whether of a Federal officer or a special officer—that is, than to establish the case?

Mr. CRAIN. What we object to is the statement always made regarding all of these bills and in all of the arguments in connection with them, that if the States are permitted to attend to their own business they can get along very well without the aid of the National Government. Now, I say—and of course I am speaking with great respect—that that is a deceitful statement to the American people, for the very reason that Congress never interferes with the administration of the State law; but what the prohibitionist seeks is to have Congress enforce obnoxious State laws, unsupported by public sentiment, which the States are powerless to enforce. That is the question running all through this legislation.

Mr. HUMPHREYS. Congress has power under the law now, because the order of the Internal-Revenue Commissioner is the law. Under the law Congress does interfere with the enforcement of the State statutes by extending the protection of the privilege to the class of witnesses who are not entitled to it under any of the rules of evidence that have ever come down to us from the foundation of the common law to this good day. So I say that the Federal Government is in that case offering an obstacle to the enforcement of the statutes.

Mr. CRAIN. You mean to say that if the Federal Government would do what you want it to do it would facilitate you in convicting men who violate the State law?

Mr. HUMPHREYS. I mean that exactly, and I mean to say that as they are now doing they are obstructing, and I want to get them out of the way.

Mr. CRAIN. You want Congress to help you prosecute the bad people of Mississippi for violation of your local State laws. The National Government has closed the mouth of its officers; you are seeking to make them answer.

Mr. WILLIAMS. What right has any witness to keep his mouth quiet? Suppose you were summoned into court—

Mr. CRAIN. I don't want to interrupt you, Mr. Williams, but if you will permit the National Government to attend to its own business and the States attend to theirs, as was intended by the framers of the Constitution, the prohibitionist may have sense enough not to pass State statutes which the States can not enforce.

Mr. WILLIAMS. Has any man a right to keep his mouth shut when a court of justice wants to summon him as a witness? If he could not of his own accord, why should the United States Government order him to do it?

Mr. CRAIN. On that general proposition I agree with you. As I said, so far as the real purpose of the Humphreys bill is concerned I am in hearty accord with it. We would like to see every "blind tiger" in the South closed up and the building torn down. It is of no good to our people, and they are opposed to it. It is the thing which is creating the condition which exists in the public mind of the South to-day. The sale of beer in the several States of the Union has never put one man in the penitentiary, has never made one man a murderer, nor made him commit any other crime. We have been placed in bad company—with wood alcohol and other things sold under the general term of liquor. I am not finding fault with the great distillery business of this country or the sale of pure liquors.

But I do say, and I think the committee will understand it—my good friend from Kentucky will—that in these so-called "blind tigers," the stuff which is sold under the head of whisky is nothing in the world but poison, a mixture which makes the negroes and other people crazy who imbibe it. And if they are wiped off the face of the earth we will be glad to see it done.

I hope, gentlemen, that this bill of Mr. Williams's will not become a law. As it affects the beer industry it is an unfair and ungenerous measure, unfair to one of the great products of this country. Gentlemen may talk as they please, but the scientists of the world have established the fact that beer is one of the great food products of the world. For that statement there is no lesser man in this city responsible than Doctor Wiley.

We are selling beer containing about 3½ per cent of alcohol, and the brewers of this country are endeavoring to aid in every possible way the Congress of the United States in passing what is called a pure-food bill. They are anxious to have the Government place upon every cask of beer manufactured by an American brewer a stamp of the Federal Government stating that that keg of beer contains pure malt liquor. The greatest investigation ever made upon the drink question was by the Committee of Fifty, of which Seth Low, of New York, was the chairman; the president of Harvard, and of other great universities of this country, as well as other great educators in every section of the country were members; and after an investigation of five years they have reported their conclusions—and I think if the committee, or the

gentleman from Mississippi, before he classes beer in this category with other distasteful things—

Mr. WILLIAMS. Does the gentleman really think that the gentleman from Mississippi intended, because he put that language in that part of that clause, to make that conclusive? And if he does not really think that, why should he state or say that I did?

Mr. CRAIN. I would like to have the gentleman from Mississippi take it out. He put it in, and I would like to have him take it out. I think, as the American people think, that his motives are always pure.

Mr. WILLIAMS. Does the gentleman contend that because it is in, it is on the same moral level?

Mr. CRAIN. When the gentleman placed them side by side he said that C. O. D. shipments shall apply to both of them. That is the effect in law. We are going to be treated in the same way so far as the legal effect is concerned.

Mr. WILLIAMS. A man who sells liquor and a man who steals 50 cents might be put into the same chapter of the same act in the State statute, but I do not suppose that there is a man living who would think that the legislators intended to say that the man was guilty of absolute moral turpitude in stealing 50 cents, or was exactly upon the same level with the man who had committed a much greater crime.

Mr. CRAIN. But he would have to go to jail and serve the same term. The trouble is that the brewer would have to suffer, so far as the legal consequences are concerned, exactly the same as these other C. O. D. people. I am asking that this C. O. D. provision in this bill be stricken out, so far as we are concerned.

Mr. BOUTELL. I would like to say that it might be some satisfaction to counsel to know that perhaps Mr. Williams anticipated his objections in the bill which he filed yesterday, which seems to cover the same ground, but it has referred to nothing but the vinous and spirituous liquors.

Mr. CRAIN. I did not know that we had been treated with such kindness. I hope that the bill introduced at a later hour will succeed.

STATEMENT OF HON. HENRY D. CLAYTON, A MEMBER OF CONGRESS FROM ALABAMA.

Mr. UNDERWOOD. Mr. Clayton would like to be heard.

Mr. CLAYTON. Mr. Chairman and gentlemen: I desire to make a very brief statement to the committee in behalf of the Wiley bill.^a I had three years' experience as United States district attorney in Alabama, and I found that public sentiment in that State demanded some legislation from Congress along the line of the Wiley bill. Of course, I take it that every member of this committee is in favor of each community governing itself as it may see fit: to have either the open saloon, or prohibition, or high license, or the dispensary, as the judgment of the majority of the people of a community may feel is right and proper. That is the great principle that sometimes is denominated "home rule."

Now, in Alabama we have communities throughout the State where high license obtains, others where prohibition obtains, and perhaps a

^a H. R. 3074. For copy of bill, see page 79.

few others where the open saloon obtains without extraordinarily high license; and in other communities we have what is called the dispensary system. In some of these communities where the dispensary system is in operation, the municipality in which it is located under the legislative authority, conducts the sale of intoxicating liquors, and in others there is a provision where perhaps a municipality and the county unite in these joint enterprises for the sale and control of intoxicating liquors. My experience in the office of district attorney demonstrated the fact that in some communities where there was prohibition and in some communities where these other regulations obtained rather than prohibition the "blind tigers" existed or, as they are called up in this part of the country, "speak easies."

Those "blind tigers" are conducted in defiance of State laws. The Federal Government issues a special tax, as you know, to these people. The issuance of these tax receipts, sometimes called licenses, is kept a secret, and it is difficult to prove that one was issued by the Federal Government for the sale of liquor in these communities. I was called upon frequently to have indicted violators of the law—people who were running these "blind tigers"—in a community where there was either prohibition or the dispensary or like restrictions upon the sale of liquor, and I ascertained in a number of cases that the Federal Government had issued a special-tax license authorizing, so far as the Federal Government was concerned, the sale of these liquors in these particular communities where the people did not want it sold.

The CHAIRMAN. Are you not mistaken about that?

Mr. CLAYTON. No, sir; I am not mistaken.

The CHAIRMAN. That the Government had issued a license?

Mr. CLAYTON. No; they had issued these special privileges to sell liquor in prohibition communities.

The CHAIRMAN. Oh, you are mistaken.

Mr. McCLEARY. Anything different from the ordinary tax—the \$25 tax?

Mr. CLAYTON. Nothing but the ordinary tax.

Mr. CLARK, of Missouri. It is a dispute about terms.

Mr. CLAYTON. Perhaps you do not understand me.

The CHAIRMAN. I do; but I think you do not understand what special tax is.

Mr. CLAYTON. Well, I mean taxes for the sale exacted by the United States Internal-Revenue Department for the sale of liquor.

The CHAIRMAN. Authorizing the party to sell?

Mr. CLAYTON. Yes, sir; so far as the Federal Government is concerned.

The CHAIRMAN. There is no such thing known to the Government. The tax certificate bears on its face—

Mr. CLAYTON. It seems that I have not made myself understood. Of course the Government does not authorize the individual to violate the State law, but what I meant to say was that the Government of the United States issues this special privilege, or special-tax receipt, to the individual, and of course exempts the individual from prosecution by the Federal Government for the sale of liquor. And when he gets his so-called Federal license he is then indifferent in many cases to the local or State regulations that prohibit or regulate the sale of liquor, and under this special tax of the United States he defies the local authorities. Of course it is not the purpose of the Government

of the United States, and it does not by its tax, authorize the individual to conduct this business in defiance of the State law——

The CHAIRMAN. I must have misunderstood you.

Mr. CLAYTON. Yes.

Mr. PEARRE. Is not Mr. Wiley's bill covered by the decision of the Supreme Court of the United States in these license tax cases in Fifth Wallace?^a I see here that the Supreme Court of the United States held in those tax cases that it could not be pleaded in bar or offered in evidence. Is not this bill covered by this decision?

Mr. CLAYTON. I don't intend that. What I want is further restrictions around the sale of liquor in these communities, where the people do not want it sold, or where they want to enforce dispensary laws. The object of it is to deny the issuance of the Federal permit, or tax, in such cases. Now, the State laws can punish these "blind tigers" notwithstanding this so-called Federal license, where prohibition or the dispensary obtains. They can punish them under the State law. But what is wanted is the cooperation of the Federal Government with the State authorities for the enforcement of the local laws, and for the enforcement of local public sentiment.

Mr. SHIRLEY. You consider this bill has for its purpose the calling in of the National Government to aid the State in the enforcement of its laws?

Mr. CLAYTON. That is what I think will be the effect.

The power of the Federal Government, through its revenue agents and through its machinery for enforcement, is more nearly perfect. The power of the Government for detection for all of these offenses against the revenue system of the United States is better than that of the States. And what I contend is that the Federal Government ought not in any way, by a permissive tax or in any other way, lend its aid, directly or indirectly, toward the encouragement to anyone to engage in the sale of liquor when that sale is contrary to the laws and the local sentiment, whether by prohibition or in the use of the dispensary. That is my contention.

The CHAIRMAN. This bill of Mr. Wiley's is the law now. Mr. Wiley's bill (H. R. 3074) provides: "That from and after the passage of this act it shall be unlawful for any official or any Government employee in the revenue service of the United States, or any other department of the Government, to issue a license or grant a legal permit to any person, firm, or corporation, authorizing the sale or other disposition of any spirituous, vinous, or other malt liquors or other intoxicating beverages in any community under the jurisdiction of the United States whenever and wherever the sale or other disposition thereof is prohibited by State or local laws, and any such license, if issued, shall be a nullity and afford no shield or protection to the holder thereof."

Now, the existing law says that no such license shall be construed "to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited in municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes."^b

^a License tax cases, 5 Wallace, 462.

^b United States Revised Statutes, sec. 3243.

Mr. Wiley's bill is the law now.

Mr. CLAYTON. Exactly, so far as you contend, but it goes further than existing law, and says in communities where the sale of liquor is contrary to State law that the Federal Government shall not issue any special tax. I don't want it issued at all, so that there will be no construction at all in a prohibition or a dispensary community. I don't want the Federal Government to issue any sort of license for the sale of liquor.

The CHAIRMAN. That is not Mr. Wiley's bill.

Mr. CLAYTON. That is the purpose of it. I have not examined the provisions of his bill carefully, but that is the purpose. I know that back in the Fifty-sixth Congress Mr. Wheeler, of Kentucky, introduced a bill similar to this.

The CHAIRMAN. If you will look at it you will see that it is not the law.

Mr. CLAYTON. There are other bills that do cover the point that I make.

The CHAIRMAN. That is true.

Mr. CLAYTON. Then, if Mr. Wiley's bill is defective in this particular, I think the one introduced by Mr. Clark, of Florida—

Mr. SHIRLEY. Do you believe that the Government has the right to say that a man obtaining a license to do a thing authorized by the National Government shall be dependent upon his living in a community that does or does not prohibit the doing of that?

Mr. CLAYTON. I don't know that I understand that proposition unless you unwind it again.

Mr. SHIRLEY. As I understand your bill, it is to prohibit the Government issuing, or rather receiving, a tax from a citizen engaged in the sale of liquor if that citizen lives in a community where the State or local law denies him the right to sell liquor. Now, I put to you this proposition of law, and I would like an answer if you have investigated it: Whether the United States Government, depending for the validity of its law upon the Constitution and not upon the State laws, can give a man the right to pay a tax for a certain privilege only when he lives in one section or another section of the country, making it dependent upon the State law.

Mr. CLAYTON. There is no such contention as that. I make the point now that the United States in a prohibition community, or in a dispensary community, ought not to issue this special tax. That is what I don't want it to do.

Mr. SHIRLEY. You have not gathered my point. Of course the United States Government can decline to permit any citizen to pay the tax, but can it decline to permit a citizen of the United States to pay the tax for the sole reason that he is a resident in a section of the country where the local law denies the right?

Mr. CLAYTON. I think it can. I think that this special tax, which is in the nature of a privilege, can be withheld or not in any case. That is what I believe, and that is what Mr. Wiley's bill seeks to do.

Mr. SHIRLEY. Can a privilege be given or withheld to citizens without a distinction between the laws?

Mr. UNDERWOOD. I think the United States Government can prescribe any preliminary act before the issuance of the license.

Mr. CLAYTON. Undoubtedly.

Mr. UNDERWOOD. And it can require that the State or county license shall be issued before the payment is made.

Mr. CLAYTON. Of course all of these excise taxes are more or less in the nature of a privilege.

Mr. CLARK, of Missouri. I would like to ask if the widespread experience in cities and communities where these various prohibitory and regulatory laws are in effect does not show that the issuance of this tax receipt in the popular mind makes it more difficult to enforce the local regulations wherever they are in existence.

Mr. CLAYTON. Undoubtedly that is true.

Mr. CLARK, of Missouri. That is the motive in all of these bills.

Mr. CLAYTON. I have in mind a community in Alabama when I was district attorney where I was appealed to by the good men and good women in that community to break up, through the medium of the United States court, this "blind tiger" business. They existed in defiance of local laws in the State, the business was carried on there, and they appealed to me as district attorney to see that it was broken up. I began investigating, and I found at that time that this special tax had been issued by the Federal Government, and had to inform them that so far as the Federal Government was concerned nothing could be done, and they would have to appeal to their local laws and to their local courts for enforcement.

The United States Government ought to cooperate with the State governments to carry out any laws that are upheld by the local public sentiment, or are upheld in the shape of local enactments or regulations. And it ought not to lend encouragement by giving this special license to these people who would violate the local laws. And I do not see that it involves a violation of any principle of constitutional law if the United States should withhold in such cases the grant of a special tax. That is my contention.

Furthermore, I understand that those who are opposed to the idea embraced—I think it is embraced—in the Wiley bill, and I believe in the Pearre bill, and in one of the bills introduced by Mr. Clark, of Florida, and for which idea they have been contending, object to these bills on the ground that you ought not to prosecute a man for the violation of an internal-revenue law requiring a tax, when you deny him the privilege of paying that tax. And it is on account of that position and that idea that I understand the gentleman from Mississippi, Mr. Humphreys, introduced his bill.

Now, if we can not get the idea that I have endeavored to express, and which is doubtless expressed in the Pearre and Clark bills, and also in the Wiley bill; if we can not get legislation as full as is required by these bills, then I would ask this committee to enact a law such as is called for by the Humphreys bill. I suppose Mr. Humphreys has explained that to you and that you all understand that, and that I need not dwell upon it.

I want to say to this committee also that I believe the Williams bill would go very far to meeting the demands of a large sentiment in the country which has found expression, and which did find expression in the last Congress in the bill known as the Hepburn-Dolliver bill; and I believe that the Williams bill may be free from some difficult constitutional objections which were involved in the Hepburn-Dolliver bill, which sought to amend the old Wilson law and which has been largely avoided under what is known as the original-package decisions.

Mr. BOUTELL. Right on that point, Judge, if the chairman will permit a question—

The CHAIRMAN. Yes—

Mr. BOUTELL. What would you say as to enlarging the scope of the Williams bill and taking all commodities covered by his bill that are sent into a State and not limiting it to those marked C. O. D.?

Mr. CLAYTON. I have not had time to consider that carefully, but I think that would perhaps be safe.

Mr. BOUTELL. It seems to me it would be more searching, and it would go to the root of the trouble.

Mr. CLAYTON. I would not want to commit myself absolutely to an affirmative answer on that proposition, but in a general way I would be inclined to agree with him.

I thank you, gentlemen, for your courtesy.

The CHAIRMAN. Does any other gentleman want to be heard except the gentleman [Mr. Sweet] at the table now?

Mr. PEARRE. While I yielded my time to Mr. Hendrickson, I would like to have the privilege of saying a word upon my bill.

Mr. BOUTELL. I suggest that we extend the time one-half hour beyond what we assigned this morning and that we adjourn at 4.30 o'clock.

The CHAIRMAN. If there is no objection, the committee will adjourn at 4.30 o'clock. That gives us now forty minutes.

**STATEMENT OF REV. E. M. SWEET, JR., OF MUSCOGEE, IND. T.,
SECRETARY OF THE INDIAN TERRITORY CHURCH FEDERATION FOR PROHIBITION STATEHOOD.**

Mr. SWEET. It is not my purpose, Mr. Chairman, to ask the time of the committee for myself. I am in Washington primarily in the interest of the amendment to the statehood bill continuing the prohibition of the sale of liquors in the Indian Territory, in accordance with the treaty pledges entered into with the Five Civilized Tribes by the Federal Government as one of the conditions under which these tribes agreed to the surrender of their tribal governments and the allotment of their lands in severalty. While here I am associated with the Rev. E. C. Dinwiddie, legislative superintendent of the Anti-Saloon League of America. Mr. Dinwiddie was here this morning, but he had to leave the city at noon to-day, and he desired very much to address the committee upon the pending bills.

The CHAIRMAN. Mr. Dinwiddie, I will say, agreed that he would file a brief with the committee.

(For Mr. Dinwiddie's brief see pp. 72-76.)

Mr. SWEET. This morning, when I thought the affirmative side of this question was about to be closed I desired to request the privilege in Mr. Dinwiddie's behalf that he be allowed later to address the committee or else to file a brief.

But I desire to say, while I have the courtesy of the attention of the committee, that some relief along the lines of the several bills pending before you is a matter of great importance to us in our efforts in the Indian Territory to continue the prohibition condition that has existed there for three-quarters of a century under the Federal Government. I desire to request, in behalf of the federated churches of Indian Territory, which I have the honor to represent, that you will not do

less than make more available the evidence contained in the records of the Internal Revenue Department.

There are questions involved in the other bills which I am not going to take your time to discuss to-day, but I do believe it will facilitate us, as well as other States having prohibition territory, to get possession of the evidence of the Internal-Revenue Department records to convict those who are violating the law.

But my idea in addressing the committee was to request that Mr. Dinwiddie might have the right, if this hearing be adjourned this afternoon, to file a brief on the question next week.

The CHAIRMAN. Will not the final condition of the laws of Oklahoma as to the sale of liquor be determined by your State convention?

Mr. SWEET. Yes; by the constitutional convention; and that is why we are asking that there be incorporated in the enabling act, as one of the conditions precedent to admission, a clause requiring the fulfillment of those obligations which have been entered into by the Federal Government with the Five Civilized Tribes, enabling us to continue that condition without an interregnum, which would otherwise occur between the time the State was admitted and the time the legislature would act upon this question, in which interregnum the saloon would become established.

Mr. CLARK, of Missouri. The State convention will not have a thing on earth to do with that twenty-one year clause—if the Senate agrees to it and the act is signed by the President—in the Indian Territory part of that new State, if it is made one. Then the State convention will have its say at once as to the Oklahoma part of it, and will have its say as to the Indian Territory part of it after the lapse of twenty-one years?

Mr. SWEET. That is correct.

Mr. BOUTELL. That is it.

Mr. UNDERWOOD. I ask unanimous consent that Mr. Dinwiddie be permitted to file his statement, if he does so before the clerk of the committee closes his record.

Mr. SWEET. That will be not before Tuesday? Mr. Dinwiddie is expected to return to the city Tuesday.

The CHAIRMAN. Yes; that will be in time.

Mr. SWEET. Very well. Thank you.

The CHAIRMAN. Now, Mr. Pearre.

STATEMENT OF HON. GEORGE A. PEARRE, A REPRESENTATIVE FROM MARYLAND.

[See prior remarks, p. 14.]

Mr. PEARRE. Mr. Chairman and gentlemen of the committee, I was struck by one thing, when Mr. Clayton was discussing the bill No. 3074,^a introduced by Mr. Wiley, and that was that the latter part of that bill is the law now.

Mr. CHAIRMAN. The whole of it is the law now.

Mr. BOUTELL. If they have quoted the law correctly, as being the continuation of the law of 1862.

^a For copy of H. R. 3074 see page 79.

Mr. PEARRE. Then it is not necessary to detain the committee with a discussion of that matter.

The CHAIRMAN. Mr. Wiley's bill, from A to Z, is the law as it now stands.

Mr. PEARRE. The bill that I have introduced is House bill No. 8768.^a That goes to the root of the whole matter. You will discover that I am honest in stating the object of the bill. What moral or legal reason there is why the Government of the United States should not aid the States in enforcing their laws with regard to the liquor traffic, regulating it or otherwise, I am unable to see or to learn from any argument which has been presented by any gentleman here to-day, either on one side or the other of the proposition.

Mr. BOUTELL. You believe your bill is substantially a return to the law of 1813 and the law of 1794?

Mr. PEARRE. Yes, sir; the law of 1813. The first legislation, I believe, on this subject was had in 1794, and that was followed by the act of 1813. Both of those acts practically contain the provisions of my bill. Why the Government changed its policy on that subject I am unable to say.

The CHAIRMAN. What is that law, Mr. Pearre? I beg pardon for not having paid stricter attention.

Mr. PEARRE. The act of 1794 was the first act, and that was followed by the act of 1813.

My bill prohibits the issue of a receipt for the payment of a special license revenue tax imposed by the Government. It provides:

That from and after the passage of this act it shall be unlawful for any official or governmental employee in the Internal-Revenue Service of the United States, or in any other Department of the Government, to issue a receipt for the payment of the special revenue tax of the Government imposed and levied by law upon the sale or other disposition of any spirituous, vinous, or malt liquors, or other intoxicating beverages in any State of the United States to any person, firm, or corporation until the said person, firm, or corporation shall have first procured a valid license to sell such liquors or beverages from the county in which said person, firm, or corporation desires or intends to sell the same, and shall have produced the same to the said official or Government employee in the Internal-Revenue Service of the United States for his inspection.

Now, Mr. Chairman, what do we discover? We discover that the Government of the United States is engaged in the practice of raising revenue by an internal tax, or by direct taxation, as we call it. This is recognized as a perfectly proper principle. It is a direct tax. In the enforcement of that tax what do we discover? We discover that the Government of the United States, both by the rulings of the Treasury Department and by the decisions of the Supreme Court of the United States, has perhaps unwittingly and unwillingly, yet practically, interfered with the States in the execution and prosecution of their local laws.

Why should that be permitted? There is no reason, of course, why it should be permitted from any point of view. The fact of the matter is that the Supreme Court of the United States, as Mr. Humphrey has already shown you [see p. 16] in Judge Marshall's opinion in the 9th Wheaton, 22 U. S. Reports,^b defines the relations which should

^a For copy of H. R. 8768, see page 78.

^b *Gibbons v. Ogden*, 9 Wheaton, 206.

exist between the States and the Government of the United States in the enforcement of the acts of Congress. He says in that case, *Gibbons v. Ogden*:

The acts of Congress, passed in 1796 and 1799 (1 U. S. Stat., 474, 619), empowering and directing the officers of the General Government to conform to and assist in the execution of the quarantine and health laws of a State, proceed, it is said, upon the idea that these laws are constitutional. It is undoubtedly true that they do proceed upon that idea; and the constitutionality of such laws has never, so far as we are informed, been denied. But they do not imply an acknowledgment that a State may rightfully regulate commerce with foreign nations or among the States, for they do not imply that such laws are an exercise of that power, or enacted with a view to it. On the contrary, they are treated as quarantine and health laws, are so denominated in the acts of Congress, and are considered as flowing from the acknowledged power of a State to provide for the health of its citizens. But as it was apparent that some of the provisions made for this purpose, and in virtue of this power, might interfere with, and be affected by the laws of the United States, made for the regulation of commerce, Congress, in that spirit of harmony and conciliation which ought always to characterize the conduct of governments standing in the relation which that of the Union and those of the States bear to each other, has directed its officers to aid in the execution of these laws.

We are not invoking, therefore, an unknown and unrecognized principle. We are invoking those words.

The CHAIRMAN. That does not cover the question involved in the case. It is an opinion of the court expressed incidentally in pronouncing a decision in a different case, *Mr. Pearre*. It may be entitled to weight, but—

MR. PEARRE. I admit, Mr. Chairman, that it is an obiter dictum; but it bears on the question of enforcing laws in which both the United States and the State laws are interested.

Some of the State governments prohibit the sale of liquors. It is a recognized fact that the constitutional power to regulate the sale of liquors, and to prescribe all police regulations within the State, is within the power and jurisdiction of the States themselves, and that Congress has nothing whatever to do with those. That being the case, Congress has not the power to interfere. Congress has not the power, as I understand the Constitution of the United States, to pass any prohibitory liquor law whatever in a State of the Union. It may do it for the District of Columbia or for any of the Territories, but certainly not for the State of Maryland or for the State of Mississippi, or for any other State. Therefore Maryland passes a law, not a prohibition law, and Mississippi, or some other State, passes a prohibition law, and South Carolina has a dispensary law, all recognizing the fact and the law to the effect that each one of those States has a right, in the exercise of its police power, to regulate the liquor traffic as it sees fit.

Maryland has a license law and regulates the sale of liquor; it regulates it although it permits it. A man, say, in Montgomery County, the county next adjoining the District of Columbia here, goes to procure a license in Montgomery County and can not do it, because the State of Maryland has prohibited the sale of liquor in that particular county or, by a local-option law, has permitted the people of that county to determine for themselves whether or not they shall issue licenses or permit the sale of liquor in that county. The applicant for that license, not being able to get a license in Montgomery County, comes here and gets—what? Not a license to sell liquor, but a tax receipt. That is, the Government of the United States, not having the power to license the sale of liquor in Montgomery County or in the State of Maryland

anywhere—the Government of the United States says, “All right; where do you want to sell it?” “In Montgomery County,” is the answer. He has no right to sell it in Montgomery County. The United States Government, however, as an assistant in the violation of a State law, issues a receipt, showing that the man has paid a certain tax. A tax to do what? A tax to violate a State law. Is the Government of the United States going to lend itself to that practice?

The CHAIRMAN. It is on the face of the receipt—the notice to him.

Mr. PEARRE. I have not been a United States district attorney, but I have been prosecuting attorney in the county where I live, and I find that when you come to try one of these men for the violation of a local liquor law, you do not know exactly who he may be. You have great difficulty in discovering the man who, under this special license tax, has the right to sell liquor—

Mr. HILL. Suppose this committee should recommend and the Congress should pass a law that hereafter there shall be no tax for retail liquor sellers in the United States. Would that help you any?

Mr. BOUTELL. A perfectly possible law.

Mr. PEARRE. If you repeal it, it would help us. It would relieve the whole difficulty, because there would not be any men getting out these tax receipts and assuming to sell liquor in violation of the local law; and we would prosecute under the State law the people who violate the State law. But what argument is that against asking the United States not to issue these tax receipts in localities and communities where there is a prohibition against selling liquor?

Mr. BOUTELL. What ordinarily is an additional tax is an additional burden on business. This seems to be the only case known among men where an additional tax is an encouragement to carry on business. [Laughter.]

Mr. CLARK, of Missouri. There is not the slightest doubt in the world but what that is exactly the effect that the thing has in the remote rural districts. I will swear to it.

Mr. PEARRE. Gentlemen have said that we ask the Government to assist us. We do not ask the Government to assist us at all, but we ask the Government not to prohibit us, not to interfere with us. Let the States go on operating under their local laws without interference by the Government of the United States. What possible argument can there be used for the purpose of preventing that kind of thing I am unable to see.

The CHAIRMAN. Do you think it is fair to say that the States ask the Government not to interfere? Is it not the States that interfere with the United States Government? This tax has been in existence ever since the Government was framed. The States are interfering with the General Government, and not the General Government with the States.

Mr. PEARRE. The principle of this bill which I have introduced has frequently been embodied in these internal-revenue laws. In the act of 1794 and the act of 1813 they put the substance of this bill in the law. It was subsequently taken out.

Suppose the Government of the United States should say, “We shall impose a tax on bawdyhouses,” would the Government of the United States be willing to take its revenue from a tax on bawdyhouses when the State law prohibited the maintenance of bawdyhouses? Would not the moral sentiment of this and every other Congress pro-

voke its members, you understand, to give a liberal construction to the Constitution and laws with respect to the legislative power, to the intent and end that bawdyhouses should be prohibited and broken up?

The CHAIRMAN. Do you really assume for a second, talking to this committee, Mr. Pearre, that there is any analogy whatever between a tax on bawdyhouses and a tax on spirits?

Mr. PEARRE. No; not between the character of the two things themselves, but legally there is an analogy—

Mr. CLARK, of Missouri. Four or five times there have been systematic efforts to regulate bawdyhouses by taxes and examinations and so on—

The CHAIRMAN. Municipal regulations, you mean, but no attempt, so far as I have heard, to raise revenue?

Mr. CLARK, of Missouri. No; they tax them sufficiently to pay the expenses of regulating them. They tried that in St. Louis at one time, and the preachers and women and others raised such a tremendous racket about it that, while the police said it was a good thing, the legislature repealed it.

The CHAIRMAN. They do it now, don't they?

Mr. CLARK, of Missouri. I suppose they do.

Mr. PEARRE. The Supreme Court, in the license-tax cases,^a has decided that this is not a license, and nobody pretends it is a license to sell. The Supreme Court has determined that, and that is why I think the Wiley bill is not necessary. They determined and decided that this tax receipt not only could not be offered in evidence in a prosecution under State law, but could not be pleaded in bar, showing that it was not a license and gave no right, as is specified in the license itself. In other words, the effect of existing law is stated in the tax receipt, as the chairman has called attention to.

Mr. McCLEARY. Could it be offered in evidence?

Mr. PEARRE. No.

Mr. McCLEARY. Then what becomes of the contention of Brother Humphreys about that?

Mr. CLARK, of Missouri. Brother Humphreys and others are trying to get at some way to make this applicable as evidence in a case.

Mr. PEARRE. In 177 U. S.^b and in several other cases—I have not the notes of them now—it was held that the official could not be summoned to court or compelled to testify or produce papers to show that an individual accused of selling liquor without a license was violating the law.

The circumstances were these: The State court, in trying to enforce a State law, summoned the deputy collector of internal revenue. The deputy collector refused to testify, acting under instructions of the Treasury Department. The court committed him for contempt. Upon a writ of habeas corpus issued at the instance of the Treasury Department—he was held by the State court for contempt and sentenced to imprisonment—upon the writ of habeas corpus issued at the instance of a United States district attorney and subsequently taken to the Supreme Court on a writ of certiorari, the court held there that the regulation made by the Treasury Department was a perfectly legitimate regulation within the power that the Secretary of the Treasury

^a License-tax Cases, 5 Wallace, 462.

^b Boske v. Comingore, 177 U. S., 459.

had to adopt rules and regulations for the government of his Department, and that therefore he was not only not subject to the summons of the State court, but that he could not be compelled to appear there to answer or produce the papers which would show that this individual was violating the State law by selling under the color or cover of such protection as he presumed or assumed this tax receipt gave him.

That being the case, what possible objection is there to aiding the State courts in the management of this affair and prosecuting the men under their own laws?

However, we do not ask the United States Government to aid the States, but to do away with the effect of that decision—which in effect suppresses evidence, you understand—by taking their hands off, by passing this act to do away with the effect of that decision, and to enable us to bring these men into court and prove that they have violated the State law.

Mr. HILL. That is the point I wanted to get at. I asked you if you repealed this tax throughout the United States would that help you, and now you practically say you want the aid of the Federal Government in prosecuting these people.

Mr. PEARRE. In such cases the fact is evident. A man makes application for a tax receipt, and he pays his money and gets his receipt. I say there would be no necessity for anything of the sort, for the simple reason that there would then be no tax receipt and no difficulty about it at all.

Mr. McCLEARY. You mean if these ignorant people would not lie under the impression that they had a legal license they would not attempt to sell liquor?

Mr. PEARRE. Yes; they would not be deceived into thinking they had a license.

Now, I am not a Prohibitionist, and yet I am in favor of proper restrictions and regulations of the liquor traffic under the liquor laws; and I appear here at the request of the grand juries of two counties in my district, in the judicial circuit in which I live—the grand jury of Garrett County and the grand jury of Allegany County—my home county. Those grand juries took this matter up and submitted resolutions asking the Congressman from the district to look into this matter and aid in the passage of such a law.

The CHAIRMAN. I want to ask you the question as a lawyer, Mr. Pearre, what is to prevent any legislature in passing an enactment to this effect: That upon the trial of a party indicted for illegal liquor selling, the fact that his name appears upon the public list in the collector's office shall be deemed competent evidence of his having paid a tax?

Mr. PEARRE. I do not know that I can throw any light on a legal question upon the mind of my legal friend from Pennsylvania, but I can not fancy a legislature to be foolish enough to do such a thing. It would be laying down a rule of evidence too exacting in its nature, and I do not believe such a law would be sustained by the Supreme Court of the United States.

The CHAIRMAN. It is competent for a legislature to lay down a rule of evidence, and especially so when the legislature has passed a law saying that the existence of such a fact is *prima facie* evidence of guilt, and to go a step further and say that that fact shall be proved in a certain way.

Mr. PEARRE. I question very much if that were taken to the Supreme Court of the United States whether the Supreme Court of the United States would hold that a man had been convicted under such circumstances "by due process of law." I have not fully investigated that, but I do not believe it is an insurmountable objection by any manner of means.

I thank you, gentlemen, for your attention.

**STATEMENT OF HON. MOSES L. BROOCKS, A REPRESENTATIVE
FROM TEXAS.**

Mr. BROOCKS. Mr. Chairman and gentlemen, I shall detain you but a few minutes. I suppose my State is as largely interested in the subject-matter of the bills before your committee as any other State in the Union, and I believe that the evil sought to be remedied by the Williams' amendment is, perhaps, the greatest obstacle that we have to contend with in the enforcement of the local-option law in Texas. In the district which I represent there are fourteen counties and local option prevails in nine out of the fourteen. Now, it is no argument for gentlemen to stand here, as the gentleman from Massachusetts has, and tell you about the failure of local option in the various counties and States of this Union. That is one of the very things that we are seeking to remedy by these bills. Not, as I take it, by invoking the help of the General Government in support of our State laws, but by requiring the General Government to withdraw its interference with the enforcement of our State laws. This is the position we assume.

Now, in my own town—and it is so in other towns in Texas where local option prevails—there are great stacks of jugs and cases of whisky shipped in from other States without its being ordered at all, shipped C. O. D. I do not know whether the shippers designate the parties to whom these cases of whisky are to be delivered as A, B, C, or what else. But I do know the fact—at least I hear it very often stated—that something is required to be done by the agent in whose care it is shipped, to complete the sale of the liquor. He advises the parties to whom these shipments are made of their having express packages in his office, and each party thus made aware of a shipment to him either pays the package out himself or invites others to club in with him to make up the price of the C. O. D. charges, and, after paying the same to the agent, obtains the liquor and divides it among the crowd so contributing, and a bad condition of affairs is the result, drunkenness and debauchery being brought about by the agency of the express company.

The passage of the Williams amendment would prevent this state of affairs, and the people would be better enabled to enforce their local-option laws. Besides, gentlemen, no one could be harmed by preventing these C. O. D. shipments of whisky; for if they were prohibited, persons wanting whisky would have only to buy a money order and send it to the house selling the stuff, and it would come already paid for. It is known when a whisky house sends a lot of whisky into a town in a local-option community, without having received an order for it, that it is the purpose of said house to violate the local-option laws of said place.

The CHAIRMAN. Do you think the case you stated is protected by the interstate-commerce law.

Mr. BROOCKS. You mean in my State?

The CHAIRMAN. I mean that sort of thing—are the people who violate such laws in Texas under protection from prosecution by the interstate-commerce law?

Mr. BROOCKS. The express companies have the privilege, under the interstate-commerce law, to ship whisky into these local-option communities, and the temptation to violate the local-option law by reason of the express agent's action, as I have stated before, is greatly intensified. I think no injustice will be done anyone by depriving said companies of the right they now have to make these C. O. D. shipments.

The CHAIRMAN. I just wanted to get your idea about it.

Mr. BROOCKS. Yes; that is my idea about it. Now, as to whether or not local option is a success is not a question for us to discuss now. I am a local optionist myself. I do not know that I would favor State prohibition in Texas, because in communities where the sentiment is largely against prohibition, I take it, the law would not be enforced.

You gentlemen who live in cities under good police regulations do not know the enormity of this illegal sale of whisky in isolated communities which do not enjoy such protection, and what a struggle we have in such communities to enforce our local law. It is something terrible, and we respectfully ask a withdrawal by the General Government of these hindrances to the enforcement of our local law. A large part of Texas has local option, and I believe the sentiment in favor of it is gaining ground in our State. One of the chief arguments of the opponents of local option is that it does not prohibit and the main reason, in my judgment, why it does not prohibit is the decision of the Supreme Court of the United States in reference to C. O. D. shipments in the local option communities. This decision was a black eye, if I may use that expression, to the enforcement of the law. I hope, therefore, gentlemen, that this Williams amendment may be favorably reported to the House.

I would like also to see at least one of the other bills under consideration by your committee reported favorably. In the event the committee does not see fit to recommend the bill providing that we should have the benefits of the tax receipts in evidence in trials of persons charged with the violation of local option laws, then I would respectfully ask the committee to favorably report the other measure which proposes to prohibit the General Government from receiving the tax from any person proposing to sell liquor in a local option community. As suggested by a member of your committee, Judge Clark, there are those who are foolish enough to believe that having paid the tax to the General Government they are thereby licensed to sell whisky in local option communities regardless of a State law. Violations of the local option laws would, in my judgment, be reduced by the refusal of the General Government to accept such tax. I think the passage of these bills would be violative of no rights under the Constitution, and respectfully request that you report them favorably to the House.

ADDITIONAL STATEMENT OF HON. FRANK CLARK, REPRESENTATIVE FROM FLORIDA.

[For Mr. Clark's former statement see pp. 10-14.]

Mr. CLARK, of Florida. I would like to submit just one or two remarks, if the committee will bear with me a moment. I want to say in the beginning, in answer to the chairman's question to Mr. Pearre, that the State of Florida has passed an act making this tax receipt the proof of guilt. The difficulty is to get the evidence.

The CHAIRMAN. That is what I suggested the remedy for; that the aid which you asked consisted of making the possession of the tax receipt prima facie evidence, and as evidence of the possession of that receipt it would be competent to show that this man's name was on the published list.

Mr. CLARK, of Missouri. I want to ask you a question. How are you going to establish the fact that that man's name is on the list?

Mr. CHAIRMAN. His eyesight would show it.

Mr. CLARK, of Missouri. The State of Missouri has an area of 69,415 square miles, and is divided into two revenue districts. There are courts held in the State 200 miles away from a collector's office. Are you going to send a fellow up there and read that list and bring him back and have him swear to it?

The CHAIRMAN. That would be just as easy as it would be for him to serve a subpoena upon the collector. He would have to do the one or the other.

Mr. CLARK, of Florida. This point here is that the collectors be required to furnish the courts of record or the prosecuting authorities with certified lists of those purchasing, and then, under our act, that certified list could be considered in evidence; and then the burden would be upon the defendant to show that he was not carrying on the business.

Now, one word more—

Mr. HUMPHREYS. Before you go on with that, let me ask you a question—

Mr. CLARK, of Florida. I have only one word more to say, Mr. Humphreys, and then I will be through.

I was going to say that I heard the distinguished gentleman from Connecticut, Mr. Hill, deliver his Philippine speech in the House, and I was very much interested in it. I know that one of the burdens of that great speech of his there was that we had these people—meaning the Filipinos—and that we owed to them duties, and we ought to protect them and care for them and educate them and make men of them. I agree with him in that. That is right. So long as we keep those people I am absolutely in favor of educating them and making them fit for citizenship, if possible.

Now, then, I want the gentleman and I want this committee to join us in a work of that very kind closer at home. I want to say to you, gentlemen, that down in my State we have large lumber camps and large turpentine camps and phosphate camps, and hundreds and thousands of negroes are employed in them. Those people are with us. We have got to take care of them. It is all folly to talk about trying to get rid of them. I recognize that as a southern man who has been among them and has lived with them all my life. It is a burden that

we have got to bear. There is no use in talking about it. It is a condition that positively exists. The worst enemy on this earth that these people have to-day, and the thing that is retarding their progress more than anything else on this earth, is the carrying on of this "blind-tiger" business in that section of country.

Take the industrious ones, and on pay day the gambling, trifling, no-account negro, who hangs around idle all week and does no work, at the instance of some disreputable liquor dealer, has dead loads of liquor hid out in the woods and sells it to these people, and then there is a carnival of crime following every pay day in those camps.

If we had this law, if the Federal Government would say, "We will help you to enforce this law by withholding the means by which the evil is carried on," it would wipe out nine-tenths of the crime in my country. I am appealing to you, gentlemen, on that line to help and build up and sober up and make better men of these people who are among us and whom we can not keep from being among us.

I thought I would simply suggest that idea, that while we are in the business of helping people let us help those who are with us and have been with us so long.

ADDITIONAL STATEMENT OF HON. BENJAMIN G. HUMPHREYS, A REPRESENTATIVE FROM MISSISSIPPI.

[For Mr. Humphrey's former statement, see pp. 5-10.]

Mr. HUMPHREYS. Will you permit me to answer the question you asked Mr. Pearre?

The CHAIRMAN. Certainly.

Mr. HUMPHREYS. Under the constitution of the State of Mississippi, and I dare say under the constitutions of all the States, a man charged with crime is entitled to be confronted with the witnesses against him. The courts have decided that where a record is admissible in evidence, a certified copy of that record by the officer having control of it is also admissible.

Of course it would take a constitutional amendment to do it, but you propose to substitute for it this sort of testimony: The officer who has the custody of the record, who could certify and furnish a certificate which would be admissible in our courts, must make a list stating in effect: "The following parties have paid the tax," and must stick that on his door. Now, another man comes along and sees that on the door, and he makes a note of it. Do you think the legislature ought to have the power to subject any man to possible conviction on such testimony, which is not even second hand, but third hand? Don't you think, if the States are entitled to evidence at all, that they are entitled to the certification of the record by the officer who has the custody of the record, so as to meet the requirements of the Constitution that a man must be confronted by the witnesses against him?

Mr. UNDERWOOD. If not, why not? [Laughter.]

The CHAIRMAN. If that is all, gentlemen, we stand adjourned. Oh, do you want to be heard, Mr. Williams?

Mr. WILLIAMS. Yes, Mr. Chairman. When do you close the hearings?

The CHAIRMAN. If necessary, we will meet again when we are fresh and when you are fresh. When do you want to be heard?

Mr. WILLIAMS. I do not know.

Mr. BOUTELL. Say Tuesday morning at 10.30 o'clock, or 10 o'clock.

Mr. WILLIAMS. Why not say Monday morning? Then you will have the matter out of your way.

Mr. BOUTELL. Monday is a busier day than Tuesday. You have more mail to attend to and more of everything else.

Mr. WILLIAMS. Any time will suit me that will suit you.

The CHAIRMAN. Very well, then; let us say 2 o'clock Monday afternoon.

Mr. WILLIAMS. Yes, sir.

Thereupon, at 4.30 o'clock p. m., the subcommittee adjourned, to meet again at 2 o'clock p. m., Monday, February 5, 1906.

BRIEF OF REV. EDWIN C. DINWIDDIE, LEGISLATIVE SUPERINTENDENT OF THE ANTISALOON LEAGUE OF AMERICA, WASHINGTON, D. C.

Mr. DINWIDDIE. Mr. Chairman and gentlemen of the committee, I have the honor to represent the Anti-Saloon League of America, a federated movement of the churches of various creeds and other temperance organizations over the country. About 300 national and State bodies are thus directly federated with our national league, and nearly all of the church bodies are directly connected with our State organizations in almost forty States in the Union.

I confess to considerable embarrassment in speaking to the committee at this time upon these measures. I am in heartiest sympathy, and in this I reflect the sentiments of those whom I represent, with the object of the bills under consideration. I understand these are designed to afford a full and free opportunity for the local and State legislation upon the liquor question throughout the various States of the Union to have a fair and honest chance for successful enforcement without seeming conflict with or unnecessary interference by the United States Government. And I appreciate most thoroughly the spirit and attitude of the members of Congress who have introduced these measures and have pressed upon the attention of your body and the country the necessity for some remedial steps whereby certain existing conditions in connection with the payment of internal-revenue taxes may be changed.

I may say that at the opening of our Washington office, over six years ago, this subject received early consideration and a measure was advocated by us and introduced by Mr. Moody, of Massachusetts, then a member of this committee, which had for its object precisely what is contemplated by these bills. We took pains to learn the attitude of our forces in many of the States which were regularly and to a certain extent systematically engaged in the work of law enforcement, and found that there was a very wide divergence of opinion with reference to the specific form of the legislation which should be sought. Other matters were pressing for early attention and this subject was then permitted to remain in temporary abeyance until there should be among our people throughout the country a measure of unanimity upon the subject.

I concur heartily in what has been said with reference to the feeling that exists over all the country with reference to the attitude of the General Government upon this question, and I do not doubt that the present method of receiving special taxes from retail liquor dealers and the denial to the States of the opportunity to produce valuable

evidence in the possession of Federal officers have operated to make more difficult the enforcement of State or local legislation. With your permission, I desire only to call attention to several considerations that have weight with me and with those whom I specifically represent, and I shall endeavor to make these statements with care, as I believe we make best headway in any work of this kind when we make sure of our facts and are accurate in our terminology.

A great many people have employed the word "license" to describe the tax which the Federal Government requires from retail liquor dealers. It is true that this language was used in the original act and often in the debates when the law was passed, over forty years ago, and the word has been sometimes used even in the various Supreme Court decisions which have, at the same time, held that the license confers no authority to sell intoxicating liquors. "A license," according to Bouvier's definition, in his Law Dictionary, "is a grant by some competent authority to do an act, which, without such authority, would be illegal."

As I understand it, the United States Government neither authorizes a man to sell liquor in any of the States, nor could it do so by any specific enactment for that purpose. The regulation of the liquor traffic within the States has been universally held to be under the police powers of the State, and, in addition to this constitutional fact, the act itself specifically says: "The payment of any tax imposed by the internal-revenue laws for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on the same within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes."

The following decision of the Treasury Department, recorded in volume 2 of the Treasury Decisions, 1899, No. 21851, clearly indicates the view of the Department as well as the judgment of the courts that the payment of the United States special tax and the possession of the tax receipt for \$25 does not confer any authority whatever upon the possessor to sell liquor contrary to State law. This decision reads as follows: "Persons who indulge in the sale of alcoholic liquors, even though such business is a violation of the law of their State, are, nevertheless, required to pay the special tax under the internal-revenue laws of the United States. The stamp, however, issued to them is not a license, and does not protect them from prosecution, conviction, and sentence under the State law."

Further, this statement of the nonconferring of authority to sell liquor by the Federal Government is printed in red ink across the face of this special \$25 tax receipt. As I understand it, the position of the Federal Government is simply that if a man sells liquor at retail anywhere throughout the United States he is required to pay \$25 to the Federal Government as revenue. The Federal Government is not and of course can not be charged with the enforcement of State or local legislation; but when we consider the nature of our dual government, and the attitude of the States particularly with reference thereto, it is not asking too much—indeed it is only asking a fair and proper thing—that the Federal Government should do nothing by legislation or regu-

lations of its departments to embarrass and thwart the States in the exercise of their police powers, because of the acknowledged delegated powers of Congress to raise revenue upon one hand and regulate interstate commerce upon another.

It should be borne in mind that under the old confederation the States had absolutely plenary powers over all these subjects. The intention was not to have the States or the citizens of the States placed in a position where their reserved police powers would be seriously crippled because of their delegation to Congress of certain other powers simply in order to secure uniformity of operation in matters of purely national concern. What we contend for and what it is reasonable to expect between the Federal and State governments in matters of this kind is what Mr. Justice Johnson in his concurring opinion in the *Gibbons v. Ogden* case,^a referring to the difficulty in drawing the line between the police powers of the State governments and the commercial powers of the Federal, called "A frank and candid cooperation for the general good."

In the next place it seems that many of our friends who advocate the passage of the law to actually forbid the issuance of special-tax receipts in prohibition territory do so upon the supposition that if the parties then continue to sell intoxicating liquors without having paid the tax, the Federal Government will come in and assist the State in exercising its police powers by proceeding against such parties for selling without paying this tax and possessing this tax receipt. In other words, by one law the United States Government is to forbid its officers to receive this special tax and issue its receipt therefor to applicants proposing to retail liquors in territory in which the sale of intoxicating liquors is prohibited by State or municipal law, and by another Federal law such an applicant is to be prosecuted by the United States Government for selling such liquor without having paid this special tax and possessing the receipt therefor.

I may be in error about this, but it does not appear to me that the Federal Government will place itself in an attitude of criminally prosecuting a man for failure to pay a tax and possessing receipt therefor which the officers of the Government itself are forbidden, by another Federal statute, to receive and issue, respectively. And should the Government assume such a peculiar attitude, I have serious doubts as to whether it would be possible to convict a man under conditions just named.

I may be further in error, but I incline strongly to the belief that what is needed to remedy the admitted evils of the present situation throughout our States in connection with the issuance of these special tax receipts, is not Federal legislation to prohibit their issuance in prohibition territory, so much as a Federal mandate to the proper internal-revenue officers to furnish a certified list of those paying the special tax in certain districts as may be called for by proper State or local officers.

Federal officers are now prohibited from giving valuable, and I believe entirely proper, information which, by State legislation, could be made conclusive evidence against illicit liquor sellers, by the regulations of the Internal-Revenue Department, and which regulations have been upheld under existing law, by the Federal courts. Upon the payment of a proper fee, not excessive, but sufficiently large to

^a *Gibbons v. Ogden*, 9 Wheaton, 238.

pay for the clerical work involved, the collectors of internal-revenue should be required to furnish a certified list, giving name, the business and the time for which the taxes are paid, the place where the business is to be conducted, to proper court officers in their districts upon application therefor, or statedly as might be deemed most desirable by Congress. It will then be competent for State legislation to determine the value of this information thus acquired from internal-revenue officers as evidence in prosecuting those who conduct "speak easies," "blind tigers," and other places of illegal sale of intoxicating liquors, however they may be called. State legislation can then make the possession of this tax receipt *prima facie* evidence of intention to violate liquor laws in the absence of specific license to sell from proper local or State authorities.

I am not sure but it may be competent for the State to go so far as to make the possession of such tax receipt *prima facie* evidence of guilt in the absence of necessary local or State authority to sell. This question, however, is one for the States to determine for themselves, and I do not think that the requirement of Federal revenue officers to furnish the information which I have suggested, and which in some form or other is called for by several of these bills before the committee, is an unreasonable one or one which should meet with serious opposition from any source, unless it be those who are deliberately intending to violate the laws of their State or community on this question.

I may say, in conclusion, that I believe the vast majority of the church and moral forces which I have the honor to represent would prefer that the Federal Government received no revenue from the liquor traffic, believing that it would expedite our contest against the liquor traffic; but until this is done we incline to believe that the certified list which I have mentioned will probably more fully answer the requirements of the States in their endeavor to enforce police regulations than any other method. They can ferret out violators of law in this way through the records of the revenue department as they would not be able to do were a measure to pass aiming at the entire prohibition of the issuance of such tax receipts in prohibition territory.

There is one further matter which is not directly involved in any of the bills before the committee, but which, in my judgment, is involved in the subject-matter now before you. I believe it should have early attention and remedy. A habit has grown up in the revenue department of simply accepting a nominal additional sum from a person who has been found guilty—oftentimes they confess their guilt—of selling liquor at retail without having paid the \$25 Federal tax. A person takes the risk of violating the Federal law requiring the payment of these taxes. If the revenue officers find him so selling they oftentimes accept the tax and a nominal additional sum—50 per cent penalty—enter him upon what is known in the department as Record No. 10, and issue the tax receipt from the time he admitted or they proved he began to sell. It is true that according to Treasury Decision No. 21850, found in volume 2, Treasury Decisions, 1899, this payment does not relieve such person from criminal liability, and he is properly subject to prosecution under section 3242a of the internal-revenue laws, but in practice this is practically never done.

There should be such a modification of the law in the interest of fair dealing with the States on this question as would make it mandatory upon the revenue officers to prosecute such an offender criminally.

It would both stimulate a wholesome respect for Federal law upon one hand and be of practical assistance in the legitimate enforcement of State legislation upon the other. I have no doubt that a bill or bills covering both of the points which I have endeavored to explain in this statement could be drafted, and which will, to a very great extent, if not entirely, remedy the conditions at which these proposed bills are aimed. I earnestly bespeak the good offices of the committee in this direction.

I thank you for your courtesy.

(Signed)

EDWIN C. DINWIDDIE.

Subsequently Mr. Williams notified the subcommittee that he did not care to be heard, and the hearing was then closed.

APPENDIX.

BILLS UNDER CONSIDERATION.

H. R. 405, Fifty-ninth Congress, first session. Introduced by Mr. Williams.

A BILL to amend section sixteen of an Act entitled "An Act to provide revenue for the Government and to encourage the industries of the United States," approved July twenty-fourth, eighteen hundred and ninety-seven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section sixteen of the Act entitled "An Act to provide revenue for the Government and to encourage the industries of the United States," approved July twenty-fourth, eighteen hundred and ninety-seven, be amended so as to read as follows:

"Sec. 16. That all persons are prohibited from importing into the United States from any foreign country and from transporting into one State from another State any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article of an immoral nature, or any drug or medicine or any article whatever for the prevention of conception or for causing unlawful abortion, or any lottery ticket or any advertisement of any lottery, or any spirituous, malt, or vinous liquors, forbidden by the laws or police regulations of that State to be sold therein or prohibited by law to be sold in the county or municipality to which they are transported, when said spirituous, vinous, or malt liquors so transported into such State, county, or city is carried C. O. D., or in a manner so that the carrier thereof is charged with the duty of collecting money in payment for the same or of doing any other act as agent for the seller necessary to complete or perfect the sale. No such articles, whether imported into the United States or transported from one State to another in violation of this act, separately or contained in packages with other goods entitled to entry or consignment, shall be admitted to entry or consignment, and all such articles shall be proceeded against, seized, and forfeited by due course of law. All such prohibited articles and the package in which they are contained in the course of importation or of transportation from State to State shall be detained by the officer of customs or of internal revenue, as the case may be, and proceedings taken against the same as hereinafter prescribed, unless it appears to the satisfaction of the collector of customs or internal-revenue officer that the articles contained in the package were inclosed therein without the knowledge or consent of the importer, agent, or consignee, or consignor: *Provided*, That the drugs hereinbefore mentioned, when imported in bulk and not put up for any of the purposes hereinbefore specified, are excepted from the operation of this section."

H. R. 4533, Fifty-ninth Congress, first session. Introduced by Mr. Humphreys.

A BILL to amend the internal-revenue laws so as to provide for publicity of its records.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter three of the Revised Statutes of the United States be, and hereby is, amended in section thirty-two hundred and forty, so as to read:

"Sec. 3240. Each collector of internal revenue shall, under regulations of the Commissioner of Internal Revenue, place and keep conspicuously in his office, for public

inspection, an alphabetical list of the names of all persons who shall have paid special taxes within his district, and shall state thereon the time, place, and business for which such special taxes have been paid, and shall make and preserve a duplicate of the tax receipt or receipts issued to any person, company, or corporation, and upon application of any person he shall furnish a certified copy thereof, as of a public record, for which a fee of one dollar for each one hundred words or fraction thereof in the copy or copies so requested may be charged."

H. R. 4452, Fifty-ninth Congress, first session. Introduced by Mr. Little.

A BILL prescribing certain duties of internal-revenue collectors, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter it shall be the duty of all revenue collectors of the United States to publish monthly a list of all persons, with their places of business, paying the special tax as retailers of spirituous, malt, or fermented liquors in their respective revenue districts by posting the same in a conspicuous place in their respective offices; and it shall be the duty of said revenue officers to furnish certified copies of such lists, or any part thereof, upon the application of any prosecuting officer of the United States, or of any State or of any county or district in any State, and such lists so certified shall be prima facie evidence of the facts therein recited.

*H. R. 8104, Fifty-ninth Congress, first session. *Introduced by Mr. Clark, of Florida.*

A BILL to require internal-revenue collectors to furnish clerks of State courts with list of all persons, firms, and corporations within their respective districts who have paid special taxes as wholesale or retail dealers in spirituous, vinous, or malt liquors.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act it shall be the duty of each and every internal-revenue collector of the United States, within ten days after the end of each month, to furnish to each and every clerk of a State court of record within his collection district, under the seal of his office, a complete list of all persons, firms, and corporations that have, within the preceding month, paid a special tax as wholesale or retail dealers in spirituous, vinous, or malt liquors, giving in such list the correct post-office address of each of such persons, firms, and corporations.

SEC. 2. That all laws and parts of laws in conflict with the provisions hereof be, and the same are hereby, repealed.

H. R. 6014, Fifty-ninth Congress, first session. Introduced by Mr. Bowie.

A BILL requiring collectors of internal revenue to give information in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall hereafter be the duty of collectors of internal revenue to furnish to prosecuting attorneys of State or county or city courts with the names of persons to whom special-tax stamps for retail or wholesale dealers in liquor have been issued, when such information is called for by said attorneys in their official capacity to be used in prosecutions under any State or municipal law prohibiting the sale of such liquors, and such information shall be given by the said collectors under oath if required by the said attorneys.

H. R. 8465, Fifty-ninth Congress, first session. Introduced by Mr. Bowie.

A BILL requiring collectors of internal revenue to give information in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall hereafter be the duty of collectors of internal revenue to furnish to prosecuting attorneys or other proper officers of State or county or city courts with the names of persons to whom special-tax stamps for retail or wholesale dealers in liquor have been issued when such information is called for by said officers in their official capacity, to be used in prosecutions under any State or municipal law prohibiting the sale of such liquors, and such information shall be given by the said collectors under oath if required by said officers.

H. R. 6013, Fifty-ninth Congress, first session. Introduced by Mr. Bowie.

A BILL prohibiting the issuing of special-tax stamps to retail and wholesale dealers in liquors in prohibition districts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter no special-tax stamps shall be issued to retail

or wholesale dealers in spirituous, vinous, or malt liquors in any county, district, town, or city where the sale of such liquors is prohibited by the laws of the State or municipality in which the said prohibition territory is situated, and it shall be the duty of collectors of internal revenue to refuse to issue such special-tax stamps to any person, firm, or corporation within such prohibited territory.

H. R. 8464, Fifty-ninth Congress, first session. Introduced by Mr. Bowie.

A BILL prohibiting the issuing of special-tax stamps to retail and wholesale dealers in liquors in prohibition districts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter no special-tax stamps shall be issued to retail or wholesale dealers in spirituous, vinous, or malt liquors in any county, district, town, or city where the sale of such liquors is prohibited by the laws of the State or municipality in which the said prohibition territory is situated, and it shall be the duty of collectors of internal revenue to refuse to issue such special-tax stamps to any person, firm, or corporation within such prohibited territory.

H. R. 9320, Fifty-ninth Congress, first session. Introduced by Mr. Bell.

A BILL prohibiting the issuing of special-tax stamps to retail dealers in liquors in prohibition districts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter no special-tax stamps shall be issued to retail dealers in spirituous, vinous, or malt liquors in any county, town, or city where the sale of such liquors is prohibited by the laws of the State, county, or municipality in which the said prohibition territory is situated, and it shall be the duty of collectors of internal revenue to refuse to issue such special-tax stamps to any person or persons, firm, or corporation within such prohibited territory.

H. R. 4492, Fifty-ninth Congress, first session. Introduced by Mr. Humphreys.

A BILL to prevent the issue of internal-revenue special-tax receipts to retail liquor dealers in communities where the sale of liquors is prohibited by State laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for the collector of internal revenue, or his deputy, employee, or assistant to issue to any person or firm any stamp or stamps indicating the payment by such person or firm of the internal-revenue tax imposed by law on retail dealers in liquors and retail dealers in malt liquors until the person or firm offering to pay such tax shall furnish the collector satisfactory evidence that the sale by retail of vinous, alcoholic, or spirituous liquors, or of malt liquors, as the case may be, is not forbidden by the laws of the State or of the municipality where said business is to be carried on: *Provided,* That nothing herein shall in any way affect the liability of any person for exercising or carrying on the business of a retail dealer in liquors or a retail dealer in malt liquors without payment of the special tax required by the fourth and fifth paragraphs of section thirty-two hundred and forty-four of the Revised Statutes of the United States.

H. R. 8768, Fifty-ninth Congress, first session. Introduced by Mr. Pearre.

A BILL to aid the States in the enforcement of their liquor-license laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act it shall be unlawful for any official or governmental employee in the Internal-Revenue Service of the United States, or in any other Department of the Government, to issue a receipt for the payment of the special revenue tax of the Government imposed and levied by law upon the sale or other disposition of any spirituous, vinous, or malt liquors, or other intoxicating beverages in any State of the United States to any person, firm, or corporation until the said person, firm, or corporation shall have first procured a valid license to sell such liquors or beverages from the county in which said person, firm, or corporation desires or intends to sell the same, and shall have produced the same to the said official or Government employee in the Internal-Revenue Service of the United States for his inspection.

SEC. 2. That any person violating the provisions of this law shall be guilty of a misdemeanor, and upon conviction shall be fined in a sum of double the amount of the said tax and be removed from office.

SEC. 3. That all laws and parts of laws in conflict herewith be, and the same are hereby, repealed.

H. R. 3108, Fifty-ninth Congress, first session. Introduced by Mr. Rixey.

A BILL to forbid distilleries in local-option communities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no revenue license for the manufacture or distillation of whisky, brandy, or alcoholic liquors of any kind shall be issued for any county, town, or township, magisterial district or precinct where, by local option or refusal of the court to grant State license for the sale of liquors, no barrooms are authorized by law.

H. R. 8105, Fifty-ninth Congress, first session. Introduced by Mr. Clark, of Florida.

A BILL to prohibit internal-revenue officers from receiving special taxes from any person, firm, or corporation for the carrying on of the business of a brewer, manufacturer of stills, rectifier of distilled spirits, wholesale or retail dealer in spirituous, vinous, or malt liquors in communities where the carrying on of such business is prohibited by local laws, and to prescribe punishments for its violation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this Act it shall be unlawful for any collector of internal revenue, or other internal-revenue officer of the United States, to receive from any person, firm, or corporation, payment for any special tax as a brewer, manufacturer of stills, rectifier of distilled spirits, wholesale or retail dealer in spirituous, vinous, or malt liquors, where the business of such person, firm, or corporation is to be carried on in any voting district, town, city, county, Territory, or State, where under the local laws of such voting district, town, city, county, Territory, or State such business is prohibited.

SEC. 2. That any person, firm, or corporation engaging in any business mentioned in section one of this act in any voting district, town, city, county, Territory, or State where the carrying on of such business is prohibited by the local laws of such voting district, town, city, county, Territory, or State, shall, for every such offense, be fined not less than one hundred dollars nor more than one thousand dollars, and be imprisoned not less than six months nor more than two years.

SEC. 3. That all laws and parts of laws in conflict with the provisions hereof be, and the same are hereby, repealed.

H. R. 3074, Fifty-ninth Congress, first session. Introduced by Mr. Wiley, of Alabama.

A BILL to prevent the United States from issuing a license to any person to sell spirituous, vinous, or malt liquors or other intoxicating beverages in any community where the sale thereof is prohibited by State or local laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act it shall be unlawful for any official or governmental employee in the Revenue Service of the United States, or in any other Department of the Government, to issue a license or grant a legal permit to any person, firm, or corporation authorizing the sale or other disposition of any spirituous, vinous, or malt liquors or other intoxicating beverages in any community under the jurisdiction of the United States whenever and wherever the sale or other disposition thereof is prohibited by State or local laws, and any such license, if issued, shall be a nullity and afford no shield or protection to the holder thereof.

SEC. 2. That any person violating the provisions of this law shall be guilty of a misdemeanor, and upon conviction shall be fined a sum in double the amount of the license so issued.

SEC. 3. That all laws and parts of laws in conflict herewith be, and the same are hereby, repealed.

H. R. 273, Fifty-ninth Congress, first session. Introduced by Mr. Macon.

A BILL to prohibit the collection of a revenue tax, or the granting of other authority permitting or authorizing the sale or giving away of foreign or domestic distilled spirits, intoxicating liquors, wines, or any compound thereof in any district or territory of any of the several States or Territories of the United States of America where the sale or giving away of such foreign or domestic distilled spirits, intoxicating liquors, wines, or any compound thereof are prohibited by the laws of said States or Territories, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Internal Revenue Department, or any other authority, officer, or agent of the Government of the United States of America be, and it or they are hereby, prohibited from the collection of a revenue tax or the granting of other authority whereby permission or authority is directly or indirectly given or extended to any person, company, or corporation to sell or give away foreign or

domestic distilled spirits, intoxicating liquors, wines, or any compound thereof in any county or parish of any of the several States or Territories of the United States of America, or any part or subdivision of any of said counties or parishes where the sale or giving away of the same is prohibited by the laws of said States or Territories.

SEC. 2. That any collector, agent, officer, or other authority of the United States of America who shall violate the provisions of section one of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than five hundred dollars nor more than one thousand dollars, and in addition to such fine shall be imprisoned in the jail house of the county or parish in which said offense was committed for a period of time not less than sixty days nor longer than one year.

SEC. 3. That any person who shall sell any foreign or domestic distilled spirits, intoxicating liquors, wines, or any compound thereof in any of the States or Territories of the United States of America, without first having paid the special revenue tax required of retail liquor dealers under existing law, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars, and in addition to such fine shall be imprisoned in the jail house of the county or parish in which said offense was committed for a period of time not less than sixty days nor longer than one year.

SEC. 4. That all laws and parts of laws in conflict with this Act be, and the same are hereby, repealed.

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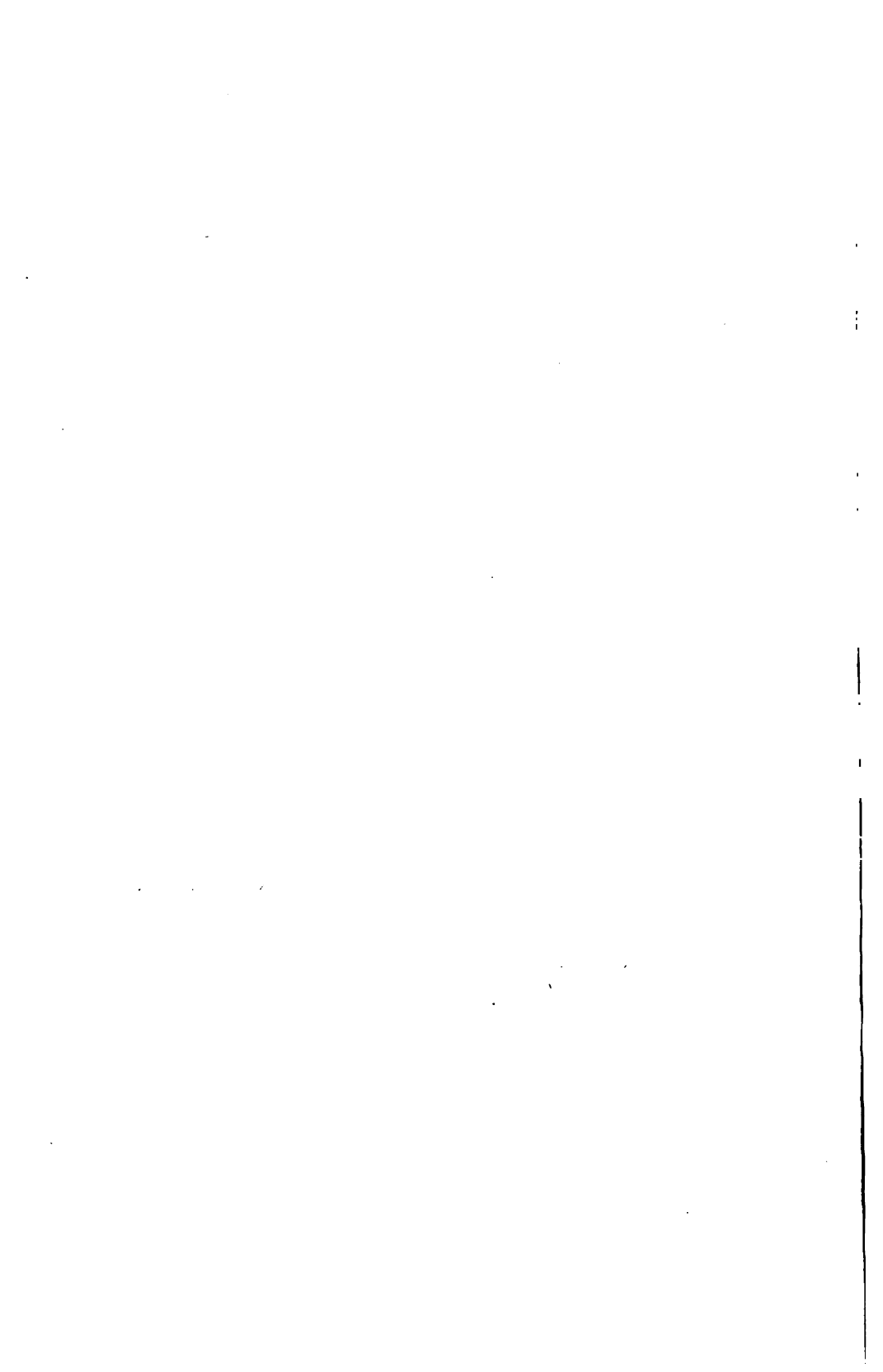
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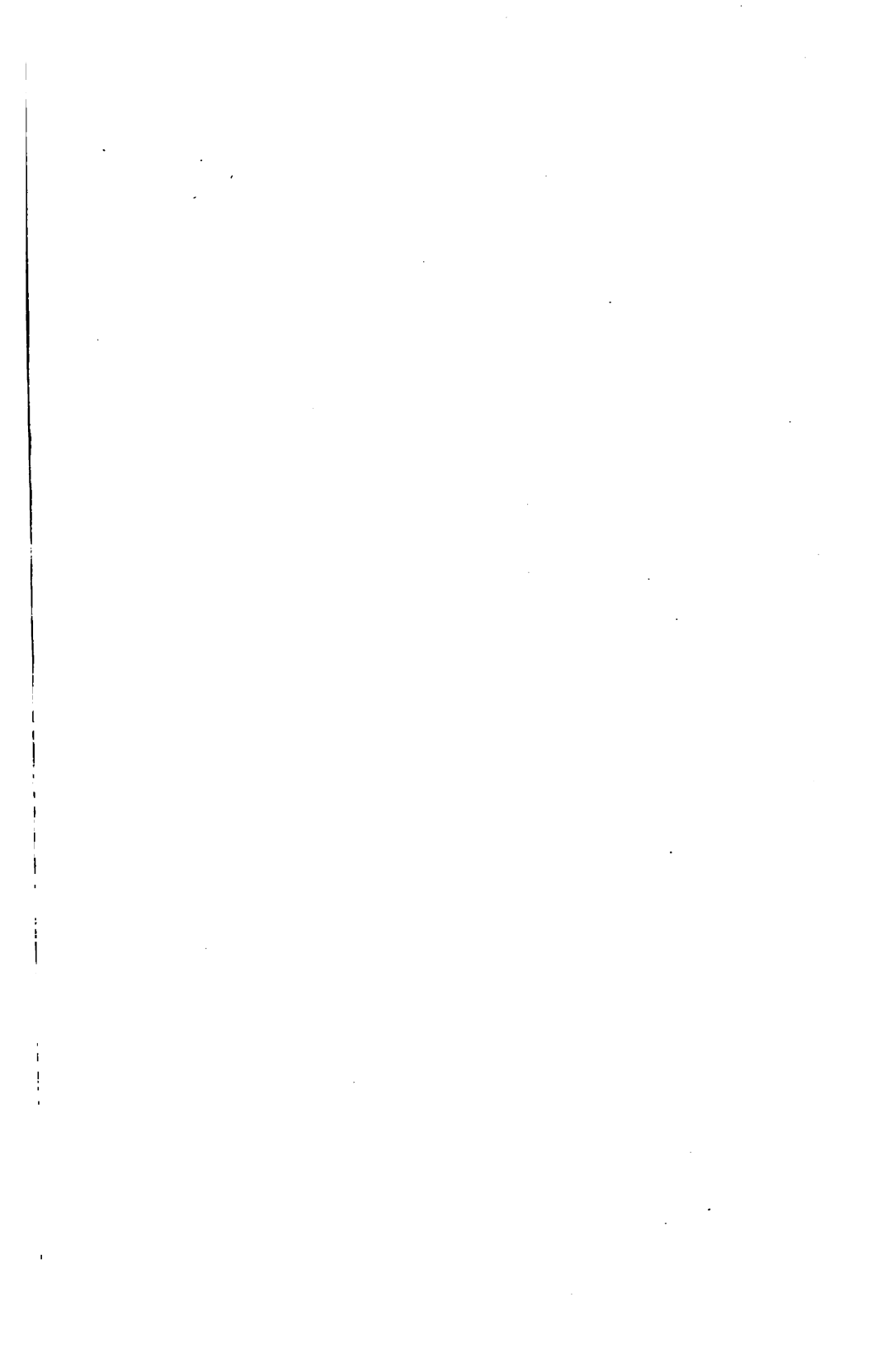
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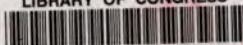
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